





KF  
4977  
A2  
1870

**CORNELL UNIVERSITY LAW LIBRARY**

**The Moak Collection**

**PURCHASED FOR**

**The School of Law of Cornell University**

**And Presented February 14, 1893**

**IN MEMORY OF**

**JUDGE DOUGLASS BOARDMAN**

FIRST DEAN OF THE SCHOOL

**By his Wife and Daughter**

**A. M. BOARDMAN and ELLEN D. WILLIAMS**



Cornell University Library  
KF 4977.A2 1870

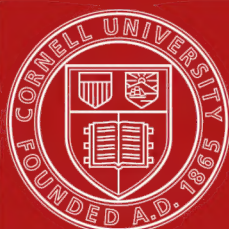
Digest of election cases :cases of conte



3 1924 018 735 377

law





## Cornell University Library

The original of this book is in  
the Cornell University Library.

There are no known copyright restrictions in  
the United States on the use of the text.











# INDEX

TO

## MISCELLANEOUS DOCUMENTS

OF THE

HOUSE OF REPRESENTATIVES

FOR THE

SECOND SESSION OF THE FORTY-FIRST CONGRESS.

1869-'70.

---

Volume 1, from No. 1 to 25, except Nos. 13, 14, and 15.

Volume 2, Nos. 13, 14, and 15.

Volume 3, from No. 26 to 153, except No. 152.

Volume 4, No. 152.

---

WASHINGTON.  
GOVERNMENT PRINTING OFFICE.  
1870.



M 8939.



# INDEX

TO THE

## MISCELLANEOUS DOCUMENTS

OF THE

### HOUSE OF REPRESENTATIVES

FOR

THE SECOND SESSION OF THE FORTY-FIRST CONGRESS.

1869-'70.

Title.	Vol.	No.
A.		
Advertising for thirty-seventh Congress. Letter from the Clerk of the House of Representatives relative to.....	3	123
Alabama. Memorial of the legislature of, relative to the admission of machinery duty free .....	3	52
Alabama. Resolution of the legislature of, for improvement of Mobile Harbor.....	3	26
Alabama. Memorial of the legislature of, for increased postal facilities..	3	89
Alaska. Letter from F. N. Wicker, with copy of report relative to the Islands St. Paul and St. George in .....	1	11
Appropriations, &c. Statement showing, during second session of the forty-first Congress .....	3	153
Aqueduct. Relative to the Washington .....	3	132
Architect, of the Capitol Extension. Letter from the, relative to the bronze doors in the passage leading from the rotunda to the House of Representatives .....	3	28
Arkansas. Memorial of the legislature of, for the relief of Captain John W. Bevins.....	3	71
Asia. Memorial of Cyrus W. Field, relative to telegraphic communication between America and .....	3	126
Assignment of contested election cases.....	3	66
Asylum. Annual report of president of the National, for Disabled Volunteer Soldiers.....	3	86
Atlantic and the Mississippi. Letter from the governor of Iowa relative to water communication between the .....	3	136
Australia. Resolution of the San Francisco Chamber of Commerce, relative to steam service between California and .....	3	118
B.		
Banking facilities. Letter from the Comptroller of the Currency, with accompanying tables, relative to .....	3	140
Barnes vs. Adams. Papers in contested case of .....	2	13
Battery, the Ridgway revolving. Letter from Harriet A. Ridgway relative to the .....	3	148
Bevins, Captain John W. Memorial of the legislature of Alabama for the relief of .....	3	71



Title.	Vol.	No.
Boudinot, Elias C. Relative to the case of.....	3	79
Bounty and pension laws. Resolution of the legislature of Missouri relative to the.....	3	48
Boyden vs. Shober. Evidence and papers in the contested case of.....	3	68
Breakwater at Wilmington Harbor, California. Resolution of the legislature of California relative to a.....	3	98
Breakwater at Crescent City, California. Memorial of the legislature of California relative to a.....	3	62
British America. Management of the Indians in.....	3	35
Bronze doors in passage leading from rotunda to House of Representatives. Letter from the Architect of the Capitol Extension relative to the.....	3	28
Buck, Charles E. Evidence and argument in case of the claim of.....	3	138
Butler, B. F. For payment to, of counsel fees in defending suit brought against him by C. W. Woolley.....	3	74
C.		
California. Resolution of the legislature of, relative to a breakwater at Wilmington, in the State of.....	3	98
California. Memorial of the legislature of, relative to a breakwater at Crescent City, in the State of.....	3	62
California. Resolutions of the legislature of, relative to steam service between San Francisco and Australia.....	3	118
Canal, Louisville and Portland. Memorial of Cincinnati Chamber of Commerce relative to.....	3	122
Capitol building in Wyoming. Memorial of the legislative assembly of Wyoming Territory relative to.....	3	60
Cavalry for New Mexico. Memorial of the legislature of the Territory of New Mexico relative to.....	3	95
Cemetery, Soldiers' National, at Gettysburg. Letter from the governor of Connecticut transmitting act of the legislature relative to.....	1	6
Cherokee Nation. Letter from Lewis Downing, principal chief of the, inclosing petitions, &c.....	3	76
Cherokee Nation. Relative to treaty with the.....	3	79
Cherokee neutral lands. Argument of W. R. Laughlin relative to.....	3	150
Claims. Papers relative to, of State of Kansas.....	3	36
Claims. Resolutions of legislature of Maine relative to claims of the State of Maine.....	3	85
Claims. Evidence and argument in the case of the claim of Charles Buck.....	3	138
Claims. Letter from Hon. F. C. Le Blond relative to the claim of James Mercer.....	3	128
Claims. Papers in the case of the claim of Charles Schreiber.....	3	69
Claims. Papers in claim of A. A. Vance for relief.....	3	39
Clerk of House of Representatives. Transmitting annual report of contingent expenses of the House.....	1	25
Clerk of House of Representatives. Transmitting list of clerks and employees of his department for year 1869.....	1	24
Clerk of House of Representatives. Communicates relative to payment made to D. C. Forney for advertising.....	3	123
Coal. Memorial of citizens of Maryland relative to duty on foreign.....	3	70
Coal. Resolution of Massachusetts legislature relative to duty on foreign.....	3	51
Coal. Letter from governor of West Virginia relative to duty on foreign.....	3	40
Coal. Communication from a committee of citizens of Maryland relative to duty on foreign.....	3	91
Coal. Resolution of the legislature of West Virginia relative to duty on foreign.....	3	43
Colorado. Memorial of the voters of Costilla and Conejos counties of.....	3	67
Colored troops. Memorial of the legislature of Kansas relative to pay of officers for organizing.....	3	77
Columbia Institution for Deaf and Dumb. Report of, for year 1869.....	3	34
Commerce and navigation. Letter to Hon. John Lynch, and report by John Meredith Read, jr., on.....	3	145
Commerce and navigation. Resolution relative to obstructions at Hell Gate.....	3	151



Title.	Vol.	No.
Committees of the House of Representatives, second session forty-first Congress.....	1	3
Congress. List of reports to be made to the second session forty-first....	1	1
Connecticut. Letter from governor of, relative to Soldiers' National Cemetery at Gettysburg .....	1	6
Constitutional amendment. Letter from governor of Ohio, transmitting action of the legislature ratifying the fifteenth.....	3	42
Constitutional amendment. Letter from the governor of Nebraska, transmitting resolution of the legislature ratifying the fifteenth .....	3	73
Consulates. Letter from Secretary of State relative to changes in .....	3	29
Contingent expenses of the House of Representatives. Annual report of the Clerk of the House of the .....	1	25
Covode <i>vs.</i> Foster. Papers in the case of, (no number, between 24 and 25)	1	
Cuba. Resolution of the Maryland State senate relative to.....	3	125
Cuba. Resolution of the legislature of Iowa relative to.....	3	103
Currency. Letter from Comptroller of the, relative to banking facilities.	3	140
D.		
Deaf and Dumb. Report of Columbia Institution for the, for 1869.....	3	34
Digest of Election Cases.....	4	152
Disabilities. Resolution of the Virginia legislature relative to the removal of .....	3	64
Disasters on the lakes. Memorial of Prof. J. A. Lapham relative to.....	1	10
Downing, Lewis, principal chief of Cherokee Nation. Relative to territorial government over them.....	3	76
E.		
Eclipse of the sun. Letter from the Superintendent of the Coast Survey relative to observations of next total, in Europe and America.....	3	127
Eggleston <i>vs.</i> Strader. Testimony in case of.....	1	16
Election cases. Digest of.....	4	152
Elections contested:		
Barnes <i>vs.</i> Adams. Papers in the case of.....	2	13
Boyden <i>vs.</i> Shober. Evidence and papers in case of .....	3	68
Covode <i>vs.</i> Foster. Papers in case of, (no number, between 24 and 25)	1	
Eggleston <i>vs.</i> Strader. Testimony in the case of.....	1	16
Grafton <i>vs.</i> Conner. Papers in the case of.....	3	144
Reid <i>vs.</i> Julian. Papers in the case of.....	2	15
Sheafe <i>vs.</i> Tillman. Papers in the case of.....	3	53
Shields <i>vs.</i> Van Horn. Papers in the case of .....	1	18
Switzler <i>vs.</i> Dyer. Papers in the case of.....	2	14
Taylor <i>vs.</i> Reading. Testimony in the case of.....	1	7
Tucker <i>vs.</i> Booker. Testimony in the case of .....	3	44
Van Wyck <i>vs.</i> Greene. Argument of contestant, (no number, between 10 and 11) .....	1	
Wallace <i>vs.</i> Simpson. Evidence in the case of. (Parts 1 and 2.).....	1	17
Whittlesey <i>vs.</i> McKenzie. Evidence in the case of.....	3	46
Zeigler <i>vs.</i> Rice. Evidence in the case of. (Parts 1 and 2.).....	1	9
Employés of the House of Representatives. List of.....	1	24
Exhibition, International. Memorial of citizens of Washington relative to.....	1	4
Expenses for material, officers, and men for the naval service .....	3	135
F.		
Field, Cyrus W. Memorial of, relative to telegraphic communication between America and Asia .....	3	126
Florida Telegraph Company. Memorial of the .....	3	149
Fort Kearny reservation. Letter from the register and receiver relative to.....	3	146



Title.	Vol.	No.
Freedmen's University. Resolution of the legislature of Kansas relative to lands in aid of a .....	3	103
G.		
Grafton <i>vs.</i> Conner. Papers in case of .....	3	144
Green, Charles L., Passed Assistant Surgeon United States Navy. Messages from the President transmitting the charges, testimony, findings, and sentence in case of .....	3	30
Greene, General Nathaniel. Letter from the secretary of state of Rhode Island relative to statue of .....	1	5
Greene, General Nathaniel. Letter from the governor of Rhode Island on same subject .....	1	23
H.		
Harbors. Memorial of the legislature of Wisconsin relative to the harbor at Racine .....	3	106
Harbors. Resolution of the legislature of Wisconsin relative to harbors on Lake Superior .....	3	102
Harbors. Resolution proposed to be submitted by Mr. Conger relative to improvement of rivers and .....	3	97
Harbors. Memorial of the legislature of Wisconsin relative to a harbor at Port Washington .....	3	65
Harbors. Resolutions of the legislature of Rhode Island relative to a harbor of refuge at Block Island .....	3	56
Harbors. Memorial of the legislature of Minnesota relative to a harbor at Du Luth .....	3	41
Harbors. Memorial of the legislature of New York relative to Port Jefferson harbor .....	3	92
Harbors. Memorial and joint resolutions of the legislature of Alabama relative to Mobile Harbor .....	3	26
Hell Gate. Relative to removal of obstructions at .....	3	151
Homestead entries. Memorial of the legislature of Minnesota relative to certain .....	3	117
House of Representatives. Resolution relative to resignation of members of .....	3	75
House of Representatives. List of members of the, second session forty-first Congress .....	1	2
House of Representatives. Additional rule of the, proposed .....	3	134
House of Representatives. List of committees of the, second session forty-first Congress .....	1	3
House of Representatives. Annual report of the Clerk of the, of the contingent expenses of the .....	1	25
I.		
Income tax. Resolution relative to the abolition of .....	3	131
Indians. Papers accompanying bill for a commission to investigate claims for depredations by .....	1	20
Indians. Relative to a territorial government for .....	1	21
Indians. Letter from the Commissioner of the General Land Office relative to the treaty of 1867 with Shawnees, Quapaws, and other .....	3	93
Indians. Memorial of the legislature of New Mexico for authority to raise cavalry for defense against the .....	3	95
Indians. Memorial of the legislature of Minnesota relative to removal of, from the frontier of said State .....	3	104
Indians. Relative to outrages committed by, on western and southwestern frontiers .....	3	139
Indians. Memorial of citizens of Texas relative to depredations by .....	3	142
Indians. Management of, in British North America .....	3	35
Indians. Letter from Lewis Downing, principal chief of the Cherokee Nation of .....	3	76
Indians. Resolution relative to the treaty with the Cherokee Nation and the case of Elias C. Boudinot .....	3	79



Title.	Vol.	No.
Indians. Memorial of legislature of Minnesota relative to removal of certain, from Lake Traverse reservation.....	3	120
Indians. Relative to a territorial government for the various tribes of..	1	21
Initial point of Union Pacific railroad. Resolution of the legislature of Iowa, relative to the.....	3	94
International exhibition. Memorial of citizens of Washington, relative to.....	1	4
Iowa. Joint resolution of the legislature of, asking increased mail facilities.....	3	121
Iowa. Joint resolution of the legislature of, for additional money-order offices.....	3	129
Iowa. Letter from register and receiver relative to Fort Kearny reservation, in the State of.....	3	146
Iowa. Joint resolution of the legislature of, relative to Cuba.....	3	103
Iowa. Letter from the governor of the State of, relative to water communication between the Mississippi and the Atlantic.....	3	136
Iron and copper products of Lake Superior. Statement of the.....	3	78
J.		
Judicial districts. Memorial of the legislature of Wisconsin relative to dividing the State into two.....	3	101
K.		
Kansas. Papers relative to the claim of the State of.....	3	36
Kansas. Resolution of the legislature of, relative to public buildings at Leavenworth.....	3	63
Kansas. Memorial of the legislature of, relative to pay of officers engaged in organizing colored troops.....	3	77
Kansas. Resolution of the legislature of, relative to a grant of lands in aid of a freedmen's university.....	3	108
Kentucky. Resolutions of the Louisville Commercial Convention, relative to the Mediterranean and Oriental Steam Navigation Company of New York.....	3	54
Kyle, Gayle H. Memorial of.....	3	72
L.		
Lake Superior. Statement of the iron and copper products of.....	3	78
Land Company. Memorial of the legislature of Wisconsin, relative to a grant of land in aid of the Wisconsin Railroad Farm Mortgage and.....	3	107
Land Office. Commissioner of the, relative to treaty of 1867, with the Shawnee, Quapaw, and other Indians.....	3	93
Lands. Cherokee neutral, argument of W. R. Laughlin, relative to.....	3	150
Lapham, Professor J. A. Memorial of, relative to disasters on the lakes.....	1	10
Laughlin, W. R. Argument of, relative to Cherokee neutral lands.....	3	150
Le Blond, Hon. F. C. Letter from, relative to the claim of James Mercer.....	3	128
Leftwich, John W., vs. W. T. Smith, eighth congressional district of Tennessee. Testimony in the case of.....	3	143
Louisiana. Resolution of the legislature of, relative to duty on sugar.....	3	61
Lumber. Letter to the Committee of Ways and Means, relative to tariff on.....	3	96
M.		
Machinery. Memorial of the legislature of Alabama relative to duty on.....	3	52
Mail routes. Memorial of the legislature of Wisconsin relative to establishment of a post road in said State.....	3	99
Mail routes. Memorial of the legislature of Minnesota for a daily mail from St. Paul to Taylor's Falls.....	3	112
Mail routes. Memorial of the legislature of Minnesota for a mail route from Blue Earth City to Jackson.....	3	110
Mail routes. Memorial of the legislature of Minnesota for a mail route from Lake City to Eyota.....	3	111



Title.	Vol.	No.
Mail routes. Memorial of the legislature of Minnesota for a mail route from Sand Creek to Oral.....	3	114
Mail routes. Memorial of the legislature of Minnesota for a mail route from Le Roy to High Forest.....	3	113
Mail facilities. Joint resolution of the legislature of Iowa for increased.....	3	121
Maine. Claims of the State of.....	3	85
Maine. Resolutions of the legislature of the State of, relative to the services of George F. Robinson for protecting the life of William H. Seward.....	3	147
Market Company. The Washington City, specifications for the building to be erected by.....	3	81
Maryland. Communication from citizens of, relative to duty on coal....	3	91
Maryland. Resolutions of the senate of, relative to Cuba.....	3	125
Maryland. Committee of citizens of, relative to duty on coal.....	3	70
Massachusetts. Resolution of the legislature of, relative to postal telegraph system.....	3	124
Massachusetts. Resolution of the legislature of, relative to duty on coal.....	3	51
Medal to Pennsylvania troops.....	3	130
Members of the House of Representatives. List of, second session forty-first Congress.....	1	2
Members of the House of Representatives. Resolution relative to right of, to resign.....	3	75
Mercer, James. Letter from Hon. F. C. Le Blond, relative to claim of....	3	128
Meteorological observations. Report of the Chamber of Commerce of New York, relative to.....	3	105
Mexico. Relative to the observance of treaty stipulations by.....	3	137
Michigan. Joint resolution of the legislature of, relative to St. Mary's Falls Canal.....	3	49
Military post near Pembina. Memorial of the legislature of Minnesota for the establishment of a permanent, (duplicate).....	3	116
Militia. Joint resolution of the legislature of Missouri relative to payment of pensions and bounty to, of that State.....	3	45
Militia. Joint resolution of the legislature of Missouri relative to pay of officers of, of that State.....	3	59
Minnesota. Memorial of the legislature of, relative to harbor at Du Luth....	3	41
Minnesota. Memorial of the legislature of, for removal of Indians from frontier of said State.....	3	104
Minnesota. Memorial of the legislature of, for reduction of foreign postal rates.....	3	109
Minnesota. Memorial of the legislature of, for a mail route from Blue Earth City to Jackson.....	3	110
Minnesota. Memorial of the legislature of, for a daily mail from St. Paul to Taylor's Falls.....	3	112
Minnesota. Memorial of the legislature of, for a mail route from Lake City to Eyota.....	3	111
Minnesota. Memorial of the legislature of, for a grant of land in aid of a railroad.....	3	90
Minnesota. Memorial of the legislature of, for a mail route from Le Roy to High Forest.....	3	113
Minnesota. Memorial of the legislature of, for a mail route from Sand Creek to Oral.....	3	114
Minnesota. Resolution of the legislature of, for improvement of Upper Mississippi, Fox, and Wisconsin Rivers.....	3	115
Minnesota. Memorial of the legislature of, for a mail route from Blue Earth City to Jackson, (duplicate).....	3	116
Minnesota. Memorial of the legislature of, relative to a military post route near Pembina, (duplicate).....	3	116
Minnesota. Memorial of the legislature of, relative to certain homestead entries.....	3	117
Minnesota. Memorial of the legislature of, for a mail route from Albert Lea to Blue Earth City.....	3	119
Minnesota. Memorial of the legislature of, for removal of certain Indians from Lake Traverse reservation.....	3	120
Missouri. Resolution of the legislature of, relative to pension and bounty laws.....	3	48
Missouri. Resolutions of the legislature of, relative to public buildings in..	3	27



Title.	Vol.	No.
Missouri. Resolutions of the legislature of, for survey of Osage River.	3	84
Missouri. Resolutions of the legislature of, relative to pay of officers of State militia.	3	59
Missouri. Resolutions of the legislature of, relative to pensions and bounty for State militia.	3	45
Money-order offices. Joint resolution of the legislature of Iowa relative to additional.	3	129
Montana. Memorial of the legislature of, for an appropriation of \$40,000.	3	37
Montgomery, General. Letter from the Secretary of State relative to the sword of.	3	88
Moore, Benjamin. Letter of J. C. Benedict relative to claim of.	1	19
Munday, John W. Memorial relative to postage on newspapers.	3	38
N.		
Navigation Company, Mediterranean and Oriental Steam, of New York.		
Memorial of the Louisville commercial convention in favor of aid to.	3	54
Navy. Letter from the Secretary of the, relative to expenses of the.	3	135
Navy. Letter from the Secretary of the, transmitting petition of warrant officers of the.	3	58
Navy. Letter from the Secretary of the, transmitting communication from Admiral Farragut relative to rank in the.	3	57
Navy. Letter from the Secretary of the, relative to reorganization of the.	3	33
Navy. Letter from the Secretary of the, relative to navy pension laws.	3	30
Navy. Letter from the Secretary of the, relative to enlistment of more men in the.	1	12
Nebraska. Resolution of the legislature of, relative to a postal telegraph.	3	133
Nebraska. Resolution of the legislature of, ratifying the fifteenth constitutional amendment.	3	73
New Mexico. Memorial of the legislature of, for authority to raise cavalry for defense against the Indians.	3	95
New York. Report of the Chamber of Commerce of the city of, relative to meteorological observations.	3	105
New York. Memorial of the legislature of the State of, relative to Port Jefferson Harbor.	3	92
New York. Resolutions of the Louisville Commercial Convention in favor of aid to the Mediterranean and Oriental Steam Navigation Company of.	3	54
O.		
Offices, new appropriations, &c. Statement showing, made during the second session of the forty-first Congress.	3	153
Officers, public. List of reports to be made by, to the second session forty-first Congress.	1	1
Ohio. Letter from the governor of the State of, transmitting the action of the legislature of, in adopting the fifteenth constitutional amendment.	3	42
Ohio. Memorial of the Cincinnati Chamber of Commerce relative to the Louisville and Portland Canal.	3	122
Ohio. Resolution of the legislature of, relative to soldiers of the war of 1812.	3	83
P.		
Pennsylvania troops. Medals to.	3	130
Pension and bounty laws. Resolution of the legislature of Missouri for extension of, to the militia of that State.	3	48
Pension law. Resolution of the legislature of West Virginia, requesting amendments of the.	3	55
Postage on newspapers. Memorial of John W. Munday, relative to.	3	38
Postal facilities for Alabama. Memorial of the legislature of Alabama asking increased, for that State.	3	89
Postal rate. Memorial of legislature, for a reduction of foreign.	3	109
Post route. Memorial of the legislature of Wisconsin for a, in said State.	3	99
Post route. Memorial of Minnesota legislature for a, from Blue Earth City to Jackson.	3	116



Title.	Vol.	No.
Post route. Memorial of Minnesota legislature for a, of same import.	3	110
Post route. Memorial of Minnesota legislature for a, from Le Roy to High Forest.....	3	113
Post route. Memorial of Minnesota legislature for a, from Sand Creek to Oral.....	3	114
Post route. Memorial of Minnesota legislature for a, from Lake City to Eyota.....	3	111
Post route. Memorial of Minnesota legislature for a, from Albert Lea to Blue Earth City.....	3	119
Postal telegraph service. Resolution of the legislature of Massachusetts relative to.....	3	124
Postal telegraph service. Resolution of the legislature of Nebraska relative to.....	3	133
President of the United States. Message from the, relative to the case of Passed Assistant Surgeon Charles L. Greene, of the navy.....	3	30
Public buildings. Resolution of the legislature of Kansas relative to the erection of, at Leavenworth.....	3	63
Public buildings. Resolution of the legislature of Missouri relative to, at the capital of said State.....	3	27
R.		
Railroads. Joint resolution of legislature of Iowa relative to the initial point of the Union Pacific.....	3	94
Railroads. Memorial of legislature of Minnesota for a grant of lands in aid of.....	3	90
Railroad. Letter from governor of Wisconsin relative to a regrant of land in aid of the St. Croix and Bayfield.....	3	50
Read, John Meredith, jr. Letter from, to Mr. Lynch, with report on commerce and navigation.....	3	145
Reid vs. Julian. Papers in contested case of.....	2	15
Reports. List of, to be made by public officers to second session forty-first Congress.....	1	1
Reservation. Memorial of the legislature of Minnesota relative to Lake Traverse.....	3	120
Reservation. Letter from the register and receiver relative to Fort Kearny.....	3	146
Resignation of members of Congress. Relative to the right of.....	3	75
Reynolds, General. Letter from, relative to the adoption of the constitution of the State of Texas.....	3	82
Rhode Island. Resolutions of the legislature of, relative to a harbor of refuge at Block Island.....	3	56
Rhode Island. Letter from the secretary of the State of, relative to the statue of General Nathaniel Greene.....	1	5
Rhode Island. Letter from the governor of, of same import.....	1	23
Ridgway, Harriet A. Memorial of, relative to the "Ridgway revolving battery".....	3	148
Rivers. Letter from the governor of Wisconsin relative to the improvement of the Wisconsin.....	3	141
River. Resolution of the legislature of Missouri for improvement of the Osage.....	3	47
Rivers. Letter from the governor of Wisconsin relative to the improvement of Wisconsin and Fox.....	3	84
Rivers. Resolution of the legislature of Minnesota for improvement of the Upper Mississippi, Fox, and Wisconsin.....	3	115
Rivers. Resolution proposed to be submitted by Mr. Conger relative to improvement of, and harbors.....	3	97
Robinson, George F. Resolutions of the legislature of Maine relative to compensation to, for protecting the life of William H. Seward.....	3	147
Rule of the House of Representatives. Additional, proposed.....	3	134
S.		
Sheafe vs. Tillman. Papers in contested case of.....	3	53
Ships. Letter from Secretary of the Navy asking authority to enlist additional sailors for relief of.....	1	12



Title.	Vol.	No.
Ship-canal. Joint resolution of the legislature of Michigan for the transfer to the United States of the St. Mary's Falls.....	3	49
Ship-canal. Statement of the condition of the St. Mary's Falls.....	3	78
Soldiers' cemetery at Gettysburg. Letter from the governor of Connecticut, transmitting act of the legislature relative to.....	1	6
Soldiers of the war of 1812. Resolution of the legislature of Ohio relative to.....	3	83
Soldiers of the war of 1812. Memorial and resolutions of the.....	3	80
Soldiers. Annual report of the President of the National Asylum for Disabled Volunteer.....	3	86
Solicitor of claims and additional clerks for the State Department. Letter from Secretary of State relative to.....	3	31
Schreiber, Charles. Papers accompanying claim of.....	3	69
Seward, William H. Resolutions of the legislature of Maine relative to compensation to George F. Robinson for protecting the life of.....	3	147
Shields <i>vs.</i> Van Horn. Papers in contested case of.....	1	18
State, Department of. Letter from the Secretary of State relative to a solicitor and additional clerks for.....	3	31
State, Secretary of. Letter from the, relative to changes in consulates...	3	29
State, Secretary of. Letter from the, relative to solicitor and additional clerks in the Department of State.....	3	31
Steam service between California and Australia. Resolution of San Francisco Chamber of Commerce relative to.....	3	118
Sugar and molasses. Resolution of the legislature of Louisiana relative to duty on.....	3	61
Sun, eclipse of the. Letter from Superintendent of the Coast Survey relative to observations of the next total.....	3	127
Sword of General Montgomery. Letter from the Secretary of State relative to the.....	3	88
Switzer <i>vs.</i> Dyer. Papers in contested case of.....	2	14
T.		
Tariff. Resolution of legislature of Louisiana relative to, on sugar, &c....	3	61
Tariff. Letter to Committee of Ways and Means relative to, on lumber...	3	96
Tariff. Resolution of legislature of Massachusetts relative to, on coal...	3	51
Tariff. Committee of citizens of Maryland relative to, on coal.....	3	91
Tariff. Memorial of citizens of Maryland relative to, on coal.....	3	52
Tax on incomes. Resolution relative to abolition of, &c.....	3	131
Taylor <i>vs.</i> Read. Testimony in contested case of.....	1	7
Telegraph Company. Memorial of the Florida.....	3	149
Telegraph, postal. Resolution of legislature of Nebraska relative to.....	3	133
Telegraph, postal. Resolution of legislature of Massachusetts relative to.....	3	124
Telegraph between America and Asia. Memorial of Cyrus W. Field relative to.....	3	126
Tennessee. Testimony in the case of John W. Leftwich <i>vs.</i> W. T. Smith, eighth congressional district of.....	3	143
Territory. Relative to acquisition of foreign.....	3	32
Territory. Relative to acquisition of foreign.....	1	22
Territorial government for Indian tribes. Resolution relative to.....	1	21
Test-oath in Virginia. Papers relative to.....	1	8
Texas. Letter from General Reynolds transmitting copy of constitution of State of.....	3	82
Texas. Memorial of citizens relative to Indian depredations in.....	3	142
Treaty stipulations with Mexico. Relative to violations of, by Mexico...	3	137
Troops. Medal to, from Pennsylvania.....	3	130
Troops. Memorial of Missouri legislature relative to payment of officers for organizing colored.....	3	77
Tucker <i>vs.</i> Booker. Testimony in contested case of.....	3	44
U.		
University, Freedmen's, of Kansas. Resolutions of the legislature of Kansas for land in aid of.....	3	108



Title.	Vol.	No.
V.		
Vance, A. A. Papers relative to claim of, for relief .....	3	39
Van Wyck <i>vs.</i> Greene. Argument in contested case of, (no number between 10 and 11) .....	1	.....
Vessels, losses of, on the lakes. Memorial of Professor J. A. Lapham, relative to .....	1	10
Virginia. Papers relative to test oath in the State of .....	1	8
Virginia. Resolution of the legislature of, for removal of disabilities from all citizens of the State of .....	3	64
Voters. Memorial of the, in the Territory of Colorado .....	3	67
W.		
Wagon road in Montana. Memorial of the legislature of the Territory of Montana, praying for a .....	3	37
Wallace <i>vs.</i> Simpson. Evidence in contested case of. (Parts 1 and 2.) .....	1	17
War of 1812. Memorial and resolutions of soldiers of the .....	3	80
War of 1812. Resolution of legislature of Ohio relative to soldiers of the .....	3	83
Washington City market buildings. Specifications for .....	3	81
Washington aqueduct. Evidence on examination of expense of .....	3	132
Washington. Memorial of citizens of, relative to holding an international exhibition in the city of .....	1	4
Water communication between the Atlantic and Pacific. Memorial of the State of Iowa in relation to .....	3	136
Water communication from the West to the Atlantic. Memorial and resolutions of the legislature of West Virginia relative to .....	3	87
West Virginia. Letter from the governor of, transmitting memorial of legislature of, relative to water communication from the West to the Atlantic .....	3	87
West Virginia. Resolution of the legislature of, relative to duty on coal .....	3	43
West Virginia. Resolution of the legislature of, requesting amendments to the pension law .....	3	55
West Virginia. Letter from the governor of, transmitting action of the legislature relative to duty on coal .....	3	40
Western and southwestern frontiers. Outrages committed by Indians on .....	3	139
Whittlesey <i>vs.</i> McKenzie. Testimony in the contested case of .....	3	46
Wicker, Frank N. Letter of, to Hon. R. C. Schenck, with copy of report made by the Solicitor of the Treasury, relative to the islands of St. Paul and St. George, Alaska .....	1	11
Wisconsin. Memorial of the legislature of, relative to a harbor at Port Washington .....	3	65
Wisconsin. Memorial of the legislature of, for improvement of Racine Harbor .....	3	106
Wisconsin. Joint resolution of the legislature of, asking for appropriations for harbor on Lake Superior .....	3	102
Wisconsin. Memorial of the legislature of, relative to dividing the State into two judicial districts .....	3	101
Wisconsin. Memorial from the legislature of, relating to the Wisconsin Railroad Farm Mortgage and Land Company .....	3	107
Wisconsin. Letter from the governor of, transmitting the memorial of the legislature asking for a regrant of land to aid in the construction of a railroad from Lake St. Croix to Superior and Bayfield .....	3	50
Wisconsin. Letter from the governor of, transmitting a resolution in relation to the improvement of Wisconsin River .....	3	141
Wisconsin. Letter from the governor of, transmitting memorial of the legislature relative to the improvement of Wisconsin and Fox Rivers .....	3	47
Wisconsin. Memorial of the legislature of, relative to mail routes in .....	3	99
Wyoming. Memorial of the legislative assembly of the Territory of, asking for an appropriation for a capitol building .....	3	60
Z.		
Zeigler <i>vs.</i> Rice. Additional testimony in the contested case of. (Parts 1 and 2.) .....	1	9



*US Congress. House. Committee on elections.*

DIGEST OF ELECTION CASES.

CASES  
OF  
CONTESTED ELECTION

IN THE  
HOUSE OF REPRESENTATIVES

FROM  
1865 TO 1871, INCLUSIVE.

COMPILED BY D. W. BARTLETT, CLERK TO COMMITTEE OF ELECTIONS.

JULY 13, 1870.—Ordered to be printed.

THIRTY-EIGHTH CONGRESS, SECOND SESSION.

COMMITTEE OF ELECTIONS.

Messrs. DAWES, of Massachusetts.  
VOORHEES, of Indiana.  
BAXTER, of Vermont.  
SMITH, of Kentucky.  
GANSON, of New York.

Messrs. SCOTFIELD, of Pennsylvania.  
SMITHERS, of Delaware.  
UPSON, of Michigan.  
BROWN, of Wisconsin.

M. F. BONZANO.—FIRST CONGRESSIONAL DISTRICT OF  
LOUISIANA.

This case, which involves the question of the reorganization of State government in a State recently in rebellion, under a proclamation of the President, and without an act of Congress, was not reached. Compensation was voted the claimant.

The cases of Messrs. Field and Mann, which follow, involve the same principle. They also were not reached.

February 11, 1865.—Mr. Dawes, from the Committee of Elections, made the following report:

*The Committee of Elections, to whom were referred the credentials of M. F. Bonzano, claiming a seat in this House as a representative from the first congressional district in Louisiana, submit the following report:*

The election upon which Mr. Bonzano claims the seat was held on the 5th of September, 1864. The number of votes cast was—

For Mr. Bonzano.....	1,609
For all others .....	1,456
Total .....	<u>3,065</u>



This election derives its authority from the constitutional convention which commenced its session in New Orleans, April 6, 1864, which amended essentially and adopted anew the constitution of Louisiana, and, among other things, did on the 22d of July, 1864, divide the State into five congressional districts, in accordance with the number of representatives assigned to that State in the apportionment under the census of 1860, and ordered an election to be held on the first Monday of September, 1864, to fill the vacancies caused by the failure of the State hitherto to elect representatives to the present Congress. As the election under consideration derives its authority from this convention, a recital of the main facts connected with the origin and action of that convention becomes necessary to a proper understanding of the subject.

From nearly the commencement of the rebellion till the appearance of the federal fleet under Commodore Farragut before the city of New Orleans in April, 1862, the State had been overrun by the rebel armies, and the governor had traitorously abandoned his duty and post, leaving the people without loyal government, and delivered over to the rebellion. Upon the taking possession of New Orleans by General Butler on the first of May following, he issued a proclamation, in which, among other things, he invited "all persons well disposed toward the government of the United States" to renew their oath of allegiance, and promised to such the protection of the armies of the United States. Under this proclamation sixty-one thousand three hundred and eighty-two (61,382) citizens took the oath of allegiance before the close of the following October. Subsequently, as the rebel army retired from other portions of the State, and the federal army advanced and extended its lines, the citizens of the districts or parishes thus delivered from the restraint of the rebellion also promptly came forward and renewed their allegiance to the government of the Union. Soldiers, white and black, enlisted into the armies of the Union, and in New Orleans many of the citizens formed themselves into home-guards, to assist the federal authorities in case of an attack by the rebels.

As fast as new parishes were brought into the federal lines and the people in sufficiently large numbers renewed their allegiance, and recognized the authority of the United States, the military governor of the State appointed judges, justices of the peace, clerks of courts, sheriffs, constables, and other civil officers, and performed all the acts which legally and constitutionally devolved upon the governor of Louisiana. In all of which her loyal citizens acquiesced and rendered an unquestioned obedience.

Under a proclamation issued by the then military governor, November 14, 1862, an election was held December 3, 1862, for representatives in the 37th Congress from the first and second congressional districts of the State, under the old apportionment and the law of Louisiana as it existed before the rebellion. In the first, 2,643 votes, and in the second, 5,117 votes were cast at this election. And the gentlemen claiming to have been thus duly elected presented their credentials to the last Congress, which, after careful examination and full discussion, admitted them to seats as members. The admission of these representatives to seats, and the opportunity which it gave to the loyal sentiment of the State to be heard and make itself manifest, had a most salutary effect upon the people of that State, and from that time the desire for a new State government and a resumption of State functions rapidly increased throughout all that portion of the State within our lines.



The major general commanding in the department of the Gulf, yielding to the pressure from all sides that he would give direction to some practical end to the efforts which this desire on the part of the people was prompting to reorganize and re-establish their State government, did, under the direction of the President, issue on January 11, 1864, a proclamation, which is annexed to this report, inviting the people of Louisiana to participate in an election on the 22d of February of State officers under the constitution and laws of the State, except so far as they related to the subject of slavery, which were declared to be to that extent suspended and inoperative. Several orders intended to secure freedom of election and conformity, as far as possible, to the laws of Louisiana previous to the rebellion were issued by the general commanding, and the evidence is satisfactory to the committee that to the extent of the federal lines this election was general, conducted in good order, free from military or other control, and largely participated in by the people.

It resulted in the election of State officers by a vote of 11,414. At this election no person voted who was not by the constitution and laws of Louisiana a voter, except soldiers and sailors in the service of the United States who were citizens of Louisiana, and in the State at the time of the election, to the number of 808. All who voted took the oath prescribed by the President in his proclamation of December 8, 1863.

These officers were installed on the 4th of March following, at New Orleans, in presence and with the acclaim of a large concourse of people, estimated at 50,000. On the eleventh of the same month the commanding general issued another order, which accompanies this report, calling for an election of delegates to a convention for the revision and amendment of the constitution of the State. The governor by a proclamation joined in this call. All parties were consulted in reference to this election, and differed only as to the time of holding it.

This convention commenced its sessions at New Orleans, April 6, 1864, and adjourned on the 25th of July. The entire proceedings and debates of this body have been laid upon the tables of the members of this House. The most important changes in the constitution of the State proposed by it were those in relation to slavery. The following were adopted by it, as the first and second articles of the constitution.

## TITLE I.

### EMANCIPATION.

ARTICLE 1. Slavery and involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, are hereby forever abolished and prohibited throughout the State.

ARTICLE 2. The legislature shall make no law recognizing the right of property in man.

The proceedings of the convention were, by proclamation of the governor, submitted to the people for ratification or rejection on September 5, 1864, and were ratified without material opposition. The whole number of votes was over 9,000.

This constitutional convention, by an ordinance adopted, divided the State into five congressional districts, and directed elections for representatives to the present Congress to be held in them, on the 5th September, 1864. And, in accordance with said ordinance, the governor issued his proclamation directing elections to be held in accordance with it. In pursuance of this ordinance of the convention and proclamation of the governor, elections were held in these several districts for representatives in this Congress; and in the first, M. F. Bonzano received



1,609 votes out of 3,065 cast. The governor gave him, accordingly, a certificate of his election, which has been presented to the House and referred to this committee.

The committee have heard Mr. Bonzano in his own behalf, as also Mr. Field, who claims to have been elected at the same time in the second district, General Banks, and others. The information and arguments submitted by them accompany this report.

This election depends for its validity upon the effect which the House is disposed to give to the efforts to reorganize a State government in Louisiana, which have here been briefly recited. The districting of the State for representatives, and the fixing of the time for holding the election, were the act of the convention. Indeed, the election of governor and other State officers, as well as the existence of the convention itself, as well as its acts, are all parts of the same movements.

It is objected to their validity, that they neither originated in nor followed any pre-existing law of the State or nation. But the answer to this objection lies in the fact that, in the nature of the case, neither a law of the State nor nation to meet the case was a possibility. The State was attempting to rise out of the ruin caused by an armed *overthrow* of its laws. They had been trampled in the dust; and there existed no body in the State to make an enabling act. Congress cannot pass an enabling act for a State. It is neither one of the powers granted by the several States to the general government, nor necessary to the carrying out of any of those powers; and all "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, *or the people*." It is preposterous to have expected at the hands of the rebel authorities in Louisiana that, previous to the overthrow of the State government, they should prepare a legal form of proceeding for its restoration. In the absence of any such legal form prepared beforehand in the State, and like absence of power on the part of the general government, under the delegated powers of the Constitution, it follows, that the power to restore a lost State government in Louisiana existed nowhere, or in "the people," the original source of all political power in this country. The people, in the exercise of that power, cannot be required to conform to any particular mode, for that presupposes a power to prescribe outside of themselves, which, it has been seen, does not exist. The *result* must be republican; for the people and the States have surrendered to the United States, to that extent, the power over their form of government in this, that "the United States shall guarantee to every State a republican form of government."

It follows, therefore, that if this work of reorganizing and re-establishing a State government was the work of the people, it was the legitimate exercise of an inalienable and inherent right, and, if republican in form, is entitled not only to recognition but to the "guarantee" of the Constitution.

The attention of the committee has therefore been directed to the inquiry how far this effort to restore constitutional government in Louisiana has been the work of the people. Those engaged in the traitorous attempt to destroy the government form no part of that people engaged in the patriotic effort to restore it. The government is to be made, if at all, for and by patriots and not by traitors. In answering another and essential question, whether a government once erected in that State will be able to maintain itself against domestic violence, traitors must be counted, but not for their voice in making the government itself. As well might the inmates of a State prison be enumerated and consulted



upon determining the character of a code of laws designed for their government.

The evidence before the committee, and all the information they could obtain, satisfied them that the movement which resulted in the election of State officers, the calling of a convention to revise and amend the constitution, the ratification of such revisal and amendment by a popular vote, and the subsequent election of representatives in Congress, was not only participated in by a large majority, almost approaching to unanimity, of the loyal people of the State, but that that loyal people, constituted a majority of all the people of the State. Making proper allowance for those who have been driven out by the rebellion, have gone into its ranks, or perished at its hands, and also for the sparsely settled, and in some parts barren, character of nearly all that portion of the State still outside of the federal lines compared with the populous and rich and fertile portions within, there can be but little doubt of the correctness of these conclusions. The committee refer to the accompanying statements for the extent, character, and population of the portions of the State within and outside the federal lines.

The committee find from all the facts that this election was held under the auspices of a new State organization which has arisen upon the ruins of the old, in as much conformity to law as the nature of the case would permit—in which the loyal people throughout the State acquiesce—and at this moment in the full discharge of all the functions of a State government. They entertain no doubt of the ability of this government to maintain itself against domestic violence if protected from enemies without. About forty thousand loyal Louisianians, white and black, are now in the armies of the Union, a force amply sufficient to overawe any lurking discontent, or punish any open resistance within its borders. The committee cannot doubt that it is the duty of Congress to encourage this effort to restore law and order in Louisiana. The precedents are many since the rebellion commenced, of the admission of members where greater irregularities existed than in the present case. In the Louisiana case, in the last House, the committee held the following language, which was sustained by a very large vote in the House:

Representation is one of the very essentials of a republican form of government, and no one doubts that the United States cannot fulfill this obligation without guaranteeing that representation here. It was in fulfillment of this obligation that the army of the Union entered New Orleans, drove out the rebel usurpation, and restored to the discharge of its appropriate functions the civil authority there. Its work is not ended till there is representation here. It cannot secure that representation through the aid of a rebel governor. Hence the necessity for a military governor to discharge such functions, both military and civil, which necessity imposes in the interim between the absolute reign of rebellion and the complete restoration of law. Suppose Governor Moore to be the only traitor in Louisiana; one of two things must take place: the people must remain unrepresented, or some one must *assume* to fix a time to hold these elections. Which alternative approaches nearest to republicanism, nearest to the fulfillment of our obligations to guarantee a republican form of government to that people—closing the door of representation, or recognizing as valid the time fixed by the military governor? Are this people to wait for representation here till their rebel governor returns to his loyalty and appoints a day for an election, or is the government to guarantee that representation as best it may? The committee cannot distinguish between this act of the military governor and the many civil functions he is performing every day, acquiesced in by everybody. To pronounce this illegal, and refuse to recognize it, is to pronounce his whole administration void and a usurpation. But necessity put him there and keeps him there.

In another case, that of Andrew J. Clements, of Tennessee, the committee of the last House, after a careful examination of the whole subject, submitted a resolution, which was unanimously adopted by the



House, in favor of his right to the seat he claimed, based upon the following conclusion :

In conclusion, the committee, upon the whole evidence, find that on the day of election no armed force prevented any considerable number of voters in any part of the district from going to the polls, and that on that day, in conformity with the forms of law, two thousand votes at least were cast for the memorialist as a representative to this Congress, and none, so far as the committee know, for any other person. They therefore report the following resolution, and recommend its adoption.

The committee of the present House have had occasion repeatedly to state the same positions in coming to conclusions upon similar cases, in which they have been sustained by the House. They are strengthened in these conclusions upon a re-examination of them in the present case, and they therefore submit the following resolution :

*Resolved*, That M. F. Bonzano is entitled to a seat in this House as a representative from the first congressional district in Louisiana.

---

#### MINORITY REPORT.

*The undersigned, minority of the Committee of Elections, to which was referred a certain paper purporting to be the credentials of M. F. Bonzano as representative from the first congressional district of the State of Louisiana, beg leave to submit the following views, dissenting from the report of the said committee as presented by the majority thereof:*

Before proceeding to consider the facts presented by the meagre and unsatisfactory testimony produced before them, the undersigned deem it proper to suggest, briefly, their views of the condition of Louisiana, the true issue proposed for the consideration of this House, and the nature and amount of proof requisite to its proper determination.

The people of Louisiana, acting through their regularly constituted authorities, on the 11th day of December, 1860, ordered a convention and appointed the 23d day of January, 1861, for its assemblage. Pursuant to the act of the legislature an election for delegates was held and the convention met on the day fixed. On the 25th of the same month an ordinance of secession was adopted by a vote of 113 yeas to 17 nays, which, by authority of the convention, was submitted for ratification and subsequently ratified by a vote of 20,448 to 17,296, and afterward, on the 21st day of March, the same convention ratified the confederate constitution by a vote of 101 to 7.

In these proceedings, not only the regular authorities but the people of Louisiana participated. In pursuance of the resolution of the people of that State, acting through approved and organized bodies, the whole public property of the United States, including great treasure and vast quantities of munitions of war, was seized by public functionaries and transferred to the political organization styling itself "the Confederate States of America."

By official acts and resolutions the authorities of Louisiana, acting by force of the powers with which they were invested by the positive sanction of the people, declared the bonds which had theretofore attached that people to the government of the United States to be disrupted and their allegiance to be transferred to another sovereignty. The government created by them went into existence and full operation, and there was no other government in the State of Louisiana nor any other organized body assuming or pretending to exercise civil functions, executive, legislative, or judicial. Thus was established a government *de facto*.

The operation of this act was very different as affecting the people



and government of the United States and the people and government of Louisiana. So far as the United States was concerned, and so far as her rights were to be affected, the act was wholly unconstitutional and void. It changed no relation of citizenship or allegiance, and her rights of jurisdiction and sovereignty remained unimpaired, only suspended in their exercise by the presence of a military power which prevented the operation of civil sovereignty and the enforcement of the laws through the civil magistracy. The necessity for the assertion of these rights by the suppression of armed resistance to her authority required a resort to force, a manifestation of opposition by organized rebellion developed a condition of civil war, which to the ordinary incidents of sovereignty superadded the rights of a belligerent power. Thus the State of Louisiana became subject to the laws of war, and, rebellion in that State being yet unsuppressed, there has hitherto been no government there recognized by the United States, except the commander-in-chief of the army, and no law except the military code.

Though thus inoperative and ineffectual against the government and people of the Union, the acts of the people of Louisiana were sufficient to work a radical change in their relations to their former State government. By their revolutionary but voluntary actions they disorganized their own political society, abrogated their former political institutions, and erected in their stead a government operated by a magistracy acknowledging no allegiance to our Constitution, but holding and administering their offices in derogation of, and in hostility to, the authority and laws of the United States.

By these disorganizing acts the sovereign power of Louisiana reverted to the loyal people of that State, and was held in abeyance until such time as, by the suppression of the rebellion and the overthrow of the usurping authority, they should be rendered capable to resume the functions of government through the organic action of the people, manifesting their will by their voluntary choice of a government republican in form, and subordinate to the Constitution and laws of the United States.

Whether this has been accomplished is the primary question to be determined, for until there is an organized State, there is no right or capacity to be represented in the Congress of the United States.

In the determination of this question the burden of proof is on those who seek for admission, or claim any benefit under or by force of the establishment of such pretended government. It is matter of public history, recognized and certified by the official acts and declarations of this government, that the inhabitants of the State of Louisiana were in insurrection against the United States, and that such condition still remains wholly unchanged or unaffected by any rescission or modification thereof.

Has evidence been presented which authorizes this House to declare that the people of Louisiana, by any proper mode of expression, have changed the status in which they were placed by their own acts and established a republican government? Such only is the form contemplated by the Constitution; such only has any title to representation on this floor; such only is the United States bound to guarantee or authorized to recognize.

The indispensable quality of such government is that it shall emanate from the people, and not only must it be derived from the great body, but their agency in its organization must have been voluntary. The idea of restraint is incompatible with volition. The government must not only rest on the consent of the governed, but that consent must not be procured by force or intimidation.



It is not sufficient that the result may show that a government apparently republican has been created, but the creation must be the exercise of a will unaffected by the presence of an over-awing power.

The erection of a State government is a purely civil act. It has no affinity or connection with martial law. The civil power is alone capable to distinguish or declare the fact of its establishment or the essential conditions of its existence. The Congress of the United States is the only body having authority, primarily, to recognize the government of a State. Neither the executive nor any subordinate military commander has capacity to incept or consummate its creation. The undersigned do not insist that an act of Congress is necessary as a prerequisite to enable the people of Louisiana to form a government, but the judgment of Congress must be passed on the result of the action of the people, in the recognition of their act, before representatives can be entitled to admission on this floor. This House must be satisfied that their constitution is ordained in accordance with their deliberate and unforced will, before it can lend its sanction to the act or recognize its validity. Two questions, therefore, are presented for consideration :

1. Did the great body of the loyal people of Louisiana, in fact, participate or clearly concur in the establishment of the government offered for recognition ?

2. Was their act the result of their deliberate will and voluntary choice, unprocured by military interference ?

If both these questions are affirmatively answered, then the State government, set up by the convention of 1861, is entitled to be recognized; if either is negatived, then there can be no pretense of right to such recognition or to the admission of representatives from the State of Louisiana.

In considering these questions it is matter of regret that the testimony before the committee was so limited, being confined to the statements of Major General Banks and A. P. Field, and the evidence of R. V. Montagne and Luther V. Parker, all produced by and in support of the right of the claimants.

No one appeared to contest the recognition of the State government, or to dispute the validity of the credentials of the proposed members. The committee had, therefore, no opportunity to examine witnesses adverse to them, although it is well understood that there are many who dissent from the action pretended to have been had in Louisiana, and we are compelled to decide this grave matter upon the *ex parte* declarations of persons interested in, or manifestly strongly affected toward, the recognition of the government inaugurated by the convention. With circumstances so unfavorable to a proper exhibition of the facts attending its organization, the undersigned proceed to consider the two material questions proposed :

1. Did the great body of the loyal people of Louisiana concur in the establishment of the State government demanding our recognition ?

There are forty-eight parishes in the State of Louisiana, including the city of New Orleans. Of these, nineteen, to wit, Orleans, Ascension, Assumption, Avoyelles, East Baton Rouge, West Baton Rouge, Concordia, East Feliciana, Jefferson, Lafourche, Madison, Plaquemines, St. Bernard, St. James, St. John the Baptist, St. Mary, Terrebonne, Iberville, and Rapides, sent delegates by a total vote of about 6,500, leaving the residue of the State, or twenty-nine parishes, unrepresented ; and at the election for the ratification of the constitution, held on the 5th of September, 1864, being also the day on which representatives to Congress were voted for, the number polled, as returned to the committee,



was about 8,000, of which some 6,500 were cast in the city of New Orleans alone, the votes in the fourth and fifth congressional districts amounting, in the aggregate, to 676.

This convention was composed of ninety-five delegates, of which number the parish of Orleans was represented by sixty-three, leaving to the country parishes the residue of thirty-two. The undersigned have no definite information of the number of votes polled in each parish, either at the election of delegates, or on the question of ratification, nor the number cast for the constitution, nor, if any, against it, but they are enabled to furnish some indication of the vote outside of New Orleans by the sparse returns which they gather from the journal of the convention.

It appears that the parish of Ascension, within our lines and neighboring to New Orleans, and which in 1860 had a white population of 3,940, elected her delegates by 61 votes; that Plaquemines, with a white population in 1860 of 2,529, cast 246; and in the parish of Madison, the witness Montague was elected by a vote of 28.

It is admitted that elections were held only in the parishes included within our lines, and that these lines were the Teche on the one side and the Amites on the other, comprehending the parish or city of Orleans, and the neighboring parishes on the Mississippi. To a question propounded to General Banks as to what portion of the State voted, his reply was:

'All as far up as Point Coupee, and there were some men from the Red River who voted at Vidalia.

And in his statement he announces that—

The city of New Orleans is really the State of Louisiana.

In 1860 there were 357,629 whites in the State, of whom 149,063, or much less than one-half, were in New Orleans, so that in no legitimate sense can it be said that it constitutes the State. It is incredible that there are not many loyal men, the test of loyalty being the willingness to take an oath of allegiance, who were entitled to suffrage upon the question of the formation of their government, but who, from the control of the public enemy, had no opportunity to vote. But assume the statement to be true, it is in evidence that there are not less than 13,000 registered and qualified voters in the city of New Orleans alone who have taken the oath prescribed by the proclamation of the President, and the vote cast at the ratification and the election for members of Congress demonstrates that not more than one-half the number of those entitled to vote in that city voted at that election, to say nothing of the residue of the State.

In the suggestions presented by General Banks to the Judiciary Committee of the Senate, he attempts to account for the meagre vote by the operation of three causes:

1st. By the fact that no opposition to the constitution was manifested in public or private, and no special effort on the part of its friends was required to secure its adoption.

2d. That, from the fact that much uncertainty existed as to the probable ratification of the form of government by the Congress of the United States, deterred many persons from supporting it who would gladly have done so had they known it to be in accordance with the wishes of the government; and,

3d. From the belief that it was possible that the rebel authority in this State might hereafter be established, when persons participating in the reorganization would suffer in consequence of that act.

These last considerations affected many perfectly well disposed and naturally loyal but timid persons.

Had a contest upon the constitution been made by the opponents of emancipation, and had it been generally understood that the authority for organization would have



been approved by the government of the United States, the vote in this election would not have been less than 15,000.

As to the cause first assigned, without intimating that General Banks does not speak according to his belief, in view of the testimony of Messrs. Field and Parker, who were doubtless better informed, the undersigned must be permitted to doubt the accuracy or extent of his knowledge; for it is unquestionable that there was much private if not public hostility to its ratification.

The other causes alleged are very striking, as demonstrating not the concurrence of the people, but exactly the reverse, and indicating a settled purpose not to have anything to do with the election. They found very sufficient grounds for not participating, and the undersigned suggest that they are fatal to the reasoning of General Banks.

Mr. Field felt the force of the objection on that point and endeavored to avoid it. In accounting for the paucity of the vote, he says:

It may be asked, and with some propriety too, why did we not poll a larger vote? That was beyond our control. You see, the party representing the McClellan interest refused to vote. They would have no participation in the election. The party representing the interest of Mr. Durant would not vote for what they called a bogus government. We could not force them to vote. They were qualified, for they had taken the oath of allegiance.

Luther V. Parker, also, speaking in relation to the canvass, gives his experience and the result of his observation:

The election was as fully canvassed as any, and those who wanted to speak and oppose the adoption of the constitution, spoke as freely as they would at any other time or place. I was one of the speakers at the election for members of Congress, and I know the contest was a sharp one. There were all the elements of opposition brought to bear that could be, and in every shape and form. The only thing that we had trouble with was, that there were certain parties there who would not vote either one way or the other.

By Mr. Dawes:

Question. Why?—Answer. They would not give any reason why.

Q. Were they parties professing to be loyal?—A. Parties reputed to be loyal, and we had no reason to believe them to be disloyal.

By Mr. Smithers:

Q. What proportion of such men was there?—A. I cannot tell.

Q. Was the number large or small?—A. Pretty large.

By Mr. Dawes:

Q. Who represented those men who declined to participate in the election?—A. I understood Durant and Fellows, and a few such men.

It is true that General Banks, in his statement, says in reply to the question as to what portion of the loyal people of Louisiana are represented by the views which Mr. Durant entertains:

There are not enough to appear at the polls. It is a party of chieftains without an army.

But it is manifest that those who are better acquainted with the facts place a higher estimate on the numerical strength, since they allege their defection as one of the chief reasons for the smallness of the vote.

General Banks, in his statement to the Senate committee, estimates the number of registered voters within the Union lines at from 15,000 to 18,000; so that not more than one-half participated in the erection of the new government, even of those within the lines actually held by the army, to say nothing of those who lived in all the State of Louisiana lying without our occupancy, and this, too, upon the supposition that every vote that was cast was in favor of ratification.

But it is argued that having an opportunity to vote, their refusal to



avail themselves of the privilege was the fault of the recusants, and that they are bound by the acts of those who exercise the power of suffrage.

From this proposition the undersigned wholly dissent. Whatever force the suggestion might have in the case of the choice of representatives or other officers chosen at an election established by and held in conformity with an existing law prescribing such election, they are unable to perceive its application to the creation of a government and the adoption of a constitution emanating and deriving its sanction from the original action of the people, much less to an election ordered by the military power without warrant of law. On the contrary, it was, in their judgment, requisite to the establishment of such government that it should have received the support and sanction of a majority of the loyal people of Louisiana.

In his statement to the committee, General Banks directs attention to the topography of the State of Louisiana, for the purpose of establishing the fact that the lands capable of production are along the river banks, and that the larger portion of arable and therefore inhabited lands are within the Union lines, suggesting thereby the presence of population.

Unless he intended this inference, it is difficult to discover the pertinency of the allusion or the value of his observations in this behalf. In this suggestion he has been even more unfortunate than in relation to the number of votes.

By computation from the photographed map furnished to the committee, it appears that within the lines nominally held by the Union arms there are 982,714 acres of improved lands, while in the parishes wholly outside, and over which there is no pretense of control, there are 1,574,307 acres. This result is produced upon a calculation most favorable to the claimants, since it embraces parishes such as Rapides, Concordia, Catahoula, Avoyelles, and St. Martin's, which, while nominally within our lines of control, are really abandoned. From this computation the parishes of Bienville without, and Assumption and St. Bernard within, our lines are excluded, no data concerning them being furnished by the map.

Without pursuing this branch of the investigation further, the undersigned suggest that the first question should be negatively answered, and that, in view of the facts, it may be truly averred that the people of Louisiana did not participate or concur in the establishment of the government presented for recognition.

The second question is whether the government pretended to be formed, was the result of the voluntary act of the people of Louisiana, unprocured by military interference.

This will be best answered by the history of its establishment, by the views of its authors, and its actual capability to effect the purposes for which civil governments are created.

It is testified by Major General Banks, and admitted, that the duty of organizing a government in the State of Louisiana was committed by the President to General Shepley, then military governor of New Orleans, and to Thomas J. Durant, an eminent citizen of that city; that, in pursuance of the power thus vested in them, they proceeded to some extent in the enrollment of voters and in developing sentiments of loyalty among the inhabitants. The work of reorganization not proceeding with sufficient rapidity to satisfy the Executive, in December, 1863, General Banks received a letter from that functionary, expressing his disappointment at the development of loyal feeling, and calling



upon him to communicate the reason. To this letter General Banks replied that he could not explain the cause, but that if the President desired an enrollment of the loyal people, or a government organized, it could be done, and if the Executive would give him directions he would do it immediately. In answer to this proffer authority was conferred upon him to take such measures as he thought necessary to organize a loyal free State government by the people of Louisiana, without other suggestion or limitation.

The authority committed to the former agents of the President was revoked, and the trust was broadly and unrestrictedly confided to the major general commanding the Department of the Gulf, the military representative of the commander-in-chief, ruling with absolute authority over the State to be reorganized, and of which State he declared that "the fundamental law was martial law." In pursuance of the authority, in execution of the trust, and in assurance of a complete redemption of the pledge made to the President, General Banks, on the 11th of January, 1864, issued an order for the election of State officers and indicated the 22d of February as the day of election, and subsequently, in consummation of the object with which he was charged, issued another order, to which the undersigned call attention. In that order the following language is used :

Those who have exercised or are entitled to the rights of citizens of the United States will be required to participate in the measures necessary for the re-establishment of civil government. It is therefore a solemn duty resting upon all persons to assist in the earliest possible restoration of civil government. Let them participate in the measures suggested for this purpose. Opinion is free and candidates are numerous. Open hostility cannot be permitted—indifference will be treated as crime and faction as treason.

The undersigned regret that they have not a copy of the official order, but they have no doubt of the correctness of the quotation, as it is fully confirmed by the statement of Major General Banks before the committee. He thus speaks in relation to the election, and the orders issued by him relative thereto :

I appealed very strongly to the people to take a part in the election. I thought it was necessary, and I said what I thought was right—that the loyal citizen who refused to take any part in the measures necessary for re-establishing the authority of the government of the United States, or in its political institutions, could not be considered loyal, and had not an absolute claim to remain there. But it was never said to any man, 'You must vote;' 'You shall vote; if you do not you shall be sent away.' That idea was never enforced.

Let it be remembered the question was not concerning the enforcement of obedience to the laws of the United States, it was not concerning the repression of hostility against its authority, but concerning the reorganization of their State government and the election of their municipal officers, which they had the absolute right to determine, and to which freedom of opinion and action was essential.

Let it also be remembered that, in his letter to the President, General Banks had declared that he could, and promised that he would, reorganize a State government in Louisiana; and that the purpose being so declared, the agent to effect it was the military commander, vested with complete control over the lives and fortunes of the voter, and holding in his hands the terrible enginery of martial law.

In view of these facts, it appears to the undersigned to be the veriest sophistry to declare that "it was never said to any man 'you must vote.'"

The order finds its counterpart in the letter of Mason to the Virginia electors, with the additional incentive to obedience that the major general had at his command all the machinery of military commissions,



provost marshals, and files of bayonets, to enable him to carry his threat of banishment into speedy and unappealable execution.

It is no answer that he did not do it—it is no palliation that he did not mean to do it—the threat was clear and unequivocal, the power to enforce it was present, and no man but the major general himself could venture to determine that he would not execute it. The invitation was irresistible; the effect inevitable: people voted; Hahn was declared elected, and the promise of the major general thus far redeemed.

Immediately following the gubernatorial election, an order issued from the same inexorable authority, commanding the choice of delegates to a convention, appointing the day of election and the time and place of its assemblage. In pursuance of this command, delegates were chosen, and the first paragraph of the record of the debates indicates their judgment as to the source of their power. This journal commences by the statement:

This day being fixed by the general order of Major General Nathaniel P. Banks, commanding the United States forces in the Department of the Gulf.

At a subsequent stage of their proceedings, on page 614 of the same journal, one of the most active and apparently influential members, afterwards elected a senator and now applying for admission, arguing their capacity to punish for an alleged contempt, thus defines the origin and power of the convention:

We are not only a convention of the State of Louisiana, but a military power—created and emanating from no other source than the military power, and existing by virtue of civil authority of the government of the United States.

With such high origin and unlimited power, it is somewhat ludicrous that it was powerless to arrest a simple citizen, but was compelled to request of General Banks to issue his order directing his provost marshal to take measures necessary to enable the sergeant-at-arms to bring a newspaper editor before the convention. So wholly dependent were they on the military authority, and so open in their acknowledgment, that they assembled at the command and sat in the shadow of the sword of the major general commanding the Department of the Gulf.

Such and so directly under the instigation of General Banks being the reorganization of the pretended government, the undersigned invite attention to the question whether it is capable to fulfill the legitimate objects of its creation—the protection of the citizen in the enjoyment of his civil rights, in the maintenance of commercial intercourse, and the punishment of offenders against its own laws.

How far it is effective for the former will be manifest from an order issued by command of Major General Hurlbut, so late as December 21, 1864, and signed by Harai Robinson, colonel 1st Louisiana cavalry and provost marshal general. The order is in these words:

[Special Orders No. 145.]

1. The military approval on permits for plantation, family, and trade store supplies, when such permits do not exceed two hundred and fifty dollars, will in future be signed by order of the provost marshal general, by a commissioned officer on duty at this office. This signature shall be valid for all military posts and for the following parishes: St. Bernard, Plaquemines, Orleans, Jefferson, St. Charles, St. John Baptist, St. James, Lafourche, Terrebonne, and as much of Assumption and St. Mary as may be within our military lines.

So utterly unready are the people of Louisiana for civil government, that it is not permitted to the inhabitants to traffic even for family stores without a military permit, within the parishes considered most loyal, and of these parishes there are only nine within the whole State in which such permit is available.



If such be its condition as to commercial intercourse among its own citizens, the undersigned suggest that the government is placed in even a more absurd view as to its helplessness in assuring protection by the punishment of offenders against its own laws. In proof of this they ask attention to the following order issued by command of Major General Hurlbut, dated December 27, 1864:

[Special Order No. 349.]

3. Upon the official report of the attorney general of the State of Louisiana that the ordinary courts of justice are insufficient to punish the offenders named by him, and in consideration that the State government and courts of Louisiana owe their present existence to military authority, it is ordered that Michael De Courcey, Benjamin Orr, E. McShane, Y. M. Robinson, A. G. Pierson, and B. Wadsworth, for speculation and other offenses, be sent for trial before the military commission now in session in the city of New Orleans, and of which Brigadier General B. S. Roberts, United States volunteers, is president, and that the attorney general of the State of Louisiana be admitted to appear before said commission as public prosecutor.

What a conclusive refutation of the allegation of the existence of a government capable to maintain itself, and to fulfill the conditions of its establishment, and how absolute the proof as to the regard in which it is held by the military authorities! The attorney general of the State supplicates the major general to supplant the majesty of the law, and to erect a military commission to try offenses properly cognizable by the ordinary criminal tribunals; and with cool complacency General Hurlbut accedes to the request, in consideration that the State government and courts owe their existence to military authority, and graciously permits the law officer to appear before the military commission to prosecute offenses against the municipal code of Louisiana!

Surely it is mockery to designate such a government by the name of republic, or to dignify such a community with the title of a State.

Two points are pressed by General Banks with much earnestness as inducements to recognition:

1. The propriety of recognition as tending to develop loyal sentiments.

2. The danger that the inhabitants will invite French intervention.

With due respect, the undersigned fail to perceive the force of these suggestions.

Loyalty in Louisiana, in the main, consists of mere submission to the power having the present ascendancy. It is clearly and truly stated by General Banks that little reliance is to be placed on an oath of allegiance as a test of fidelity, and it is notorious that the major portion of those within the Union lines, and nearly all the delegates to the convention, took the oath of allegiance to the Confederate States, and so long as their power was maintained in Louisiana, either voluntarily or compulsorily demonstrated their faithfulness by obedience. Upon the occupation of New Orleans by the Union forces the same persons, with equal readiness, took the oath prescribed by the President's proclamation, and so long as we hold occupancy and control will remain faithful—but no longer. Should the rebel arms again prevail there, the great body will succumb and relapse into acquiescence in its supremacy.

The only effective mode is to suppress the rebellion in the State—to destroy the government at Shreveport—to take permanent occupancy of the country, and give such assurance of protection as will enable the people to rest secure in their demonstrations of fidelity. This is not to be done by the creation or recognition of improvised or impotent civil governments, but by the steady advance of the army, bringing the inhabitants under our permanent control.



When this shall have been done, the work of restoration and reorganization will be desirable and easy of attainment. Until it shall have been accomplished all schemes of reconstruction are futile, resulting only in the creation of *quasi* civil governments, wholly subject to military authority, and incapable of furnishing protection or insuring respect.

The suggestion of French interference and apprehension for the safety of New Orleans savors of the argument *ad captandum*.

The undersigned will be permitted to observe that France is affected by no consideration of the presence or absence of civil government in Louisiana. Without underrating the importance of the city of New Orleans or the navigation of the Mississippi, they suggest that their safety is better insured by naval armaments, well-appointed fortifications, and the bayonets of our gallant soldiers, than by the unsubstantial sovereignty vested in Governor Hahn. Foreign intervention has been prevented, not by considerations of national morality or the arts of diplomacy, but by the manifestation of the power and energy of the people of the United States, by her stupendous resources, by her wonderful invention in the perfection of the enginery of war, and by the prowess of her army and navy, rendering doubtful, if not desperate, the issue of any conflict on land or sea.

These are the instrumentalities upon which we must rely, not only for the safety of New Orleans but for the final suppression of the rebellion, until which time the question should be, not how soon States shall be reorganized and members be admitted on this floor, but how they shall be restrained from setting up governments without a people and proposing representatives without constituencies, to the danger of feeble legislation and the detriment of the republic.

In view of the facts elicited by the investigation of the matter committed to them, the undersigned submit the following resolution, dissenting from the report of the majority of the committee:

*Resolved*, That M. F. Bonzano, claiming to be a representative from the first congressional district of Louisiana, is not entitled to a seat in this House as a member thereof.

N. B. SMITHERS.  
CHAS. UPSON.

# A. P. FIELD.—SECOND CONGRESSIONAL DISTRICT OF LOUISIANA.

February 17, 1865.—Mr. Dawes, from the Committee of Elections, made the following report:

*The Committee of Elections, to whom were referred the credentials of A. P. Field, claiming a seat in this House as a representative from the second congressional district in Louisiana, submit the following report:*

The election upon which Mr. Field claims the seat was held on the 5th of September, 1864. The number of votes cast was—

For A. P. Field .....	1, 377
For A. P. Dostie .....	1, 023
Total.....	2, 400
Majority .....	354



This district comprises that portion of the fourth representative district of the parish of Orleans which is included between St. Louis, Roupart, and Canal streets, and the Mississippi River; the first, second, and third representative districts of the parish of Orleans, and that portion of the tenth representative district of the parish of Orleans which is known and designated by existing statutes as the tenth ward of the city of New Orleans.

This election, like that of Mr. Bonzano, heretofore reported upon, (Report No. 13, H. of Reps.,) depends for its validity upon the effect which the House is disposed to give to the efforts to reorganize a State government in Louisiana, which have been laid before the House in that report. For the facts connected with those efforts, and the conclusions of the committee upon the same, they respectfully refer to the report in that case, which, to that extent, they desire to make a part of this report.

The committee report the following resolution, and recommend its adoption:

*Resolved*, That A. P. Field is entitled to a seat in this House as a representative from the second congressional district in Louisiana.

---

### W. D. MANN.—THIRD CONGRESSIONAL DISTRICT OF LOUISIANA.

February 17, 1865.—Mr. Dawes, from the Committee of Elections, made the following report:

*The Committee of Elections, to whom were referred the credentials of W. D. Mann, claiming a seat in this House as a representative from the third congressional district in Louisiana, submit the following report:*

The election in this case was held on the 5th of September, 1864. The number of votes cast was—

For W. D. Mann .....	1, 908
All others .....	100
Total .....	<u>2, 008</u>

This district comprises that part of the tenth representative district of the parish of Orleans which is known and designated as the eleventh ward of the city of New Orleans, and the parishes of Jefferson, Washington, St. Tammany, St. Helena, Livingston, St. Charles, St. John the Baptist, St. James, Ascension, East Baton Rouge, East Feliciana, West Feliciana, Terre Bonne, and Lafourche.

The principles involved in this case are the same which have been considered at length in the report upon the case of Mr. Bonzano, of the first district, to which the House is respectfully referred.

The committee recommend the adoption of the subjoined resolution:

*Resolved*, That W. D. Mann is entitled to a seat in this house as a representative from the third congressional district in Louisiana.



## T. M. JACKS AND J. M. JOHNSON.—FIRST AND THIRD CONGRESSIONAL DISTRICTS OF ARKANSAS.

These cases were not reached. The House voted \$2,000 compensation.

February 17, 1865.—Mr. Dawes, from the Committee of Elections, made the following report:

*The Committee of Elections, to whom were referred the credentials of T. M. Jacks and J. M. Johnson, claiming seats in this House as representatives from the first and third congressional districts of Arkansas, submit the following report:*

There seems in Arkansas at all times to have been a large number of unconditional Union men. It is evident that the so-called secession ordinance was not passed in accordance with the wishes of the people of the State. The convention elected in 1861 was largely Union, but, without instructions from the people, passed the ordinance of secession.

After three years of war and desolation, the loyal people of Arkansas assembled in convention at Little Rock in January, 1864. The result of the convention's deliberations was the amending of the State constitution, the appointment of a provisional governor, lieutenant governor, and secretary of state, and the designation of the 14th, 15th, and 16th days of March as the time for holding a general election throughout the State.

The acts of this convention, judging from the statements of its members, were rather suggestive than obligatory. Indeed, it did not claim its acts as binding until they were ratified by the people, which was done with a unanimity seldom met with. At the election on the 14th, 15th, and 16th of March the acts of the convention were approved by 12,177 voters, while they were disapproved by only 226. At that election the people of more than forty counties elected State and county officers necessary to set to work again the machinery of a loyal State government, which had been overthrown by the rebellion in the month of May, 1861.

On the 18th of April, 1864, the State government was formally inaugurated, since which time it has been struggling for an existence under difficulties which those who are strangers to its trials cannot properly appreciate.

The amended constitution differs from the constitution of the State before the rebellion in but a few important particulars.

1st. It forever prohibits slavery or involuntary servitude, which it does in the following words, viz:

[Extract from the present constitution of the State of Arkansas.]

### ARTICLE V.

#### *Abolishment of slavery.*

SECTION 1. Neither slavery nor involuntary servitude shall hereafter exist in this State, otherwise than for the punishment of crime, whereof the party shall have been convicted by due process of law; nor shall any male person arrived at the age of twenty-one years, nor female arrived at the age of eighteen years, be held to serve any person as a servant, under any indenture or contract hereafter made, unless such person shall enter into such indenture or contract while in a state of perfect freedom, and on condition of a *bona fide* consideration received, or to be received, for their services.

Nor shall any indenture of any negro or mulatto hereafter made and executed out of this State, or, if made in this State, when the term of service exceeds one year, be of



the least validity, except those given in case of apprenticeship, which shall not be for a longer term than until the apprentice shall arrive at the age of twenty-one years, if a male, or the age of eighteen years, if a female.

It also provides for the office of lieutenant governor, an office not known to the old State constitution.

The supreme judges of the State are, under the amended constitution, elected by the people; under the old they were chosen by the legislature. There are some other trifling differences relating to the trial for cases of assault and battery, the amount of claims that may be tried before a justice's court, &c.

The preamble to the constitution repudiates emphatically the rebel debt of the State, and declares null and void all acts of rebel magistrates done under the authority of the rebellion, save the solemnization of matrimony, the act of conveyancing, and others of similar nature provided for under like circumstances under the common law. The convention also provided that all laws and parts of laws in force in the State prior to the 6th day of May, A. D. 1861, and not inconsistent with the amended constitution, should be in full force and effect as before the rebellion.

The governor elect was duly and formally inaugurated on the 18th April. The legislature, composed of senators and representatives from more than forty of fifty-five counties in the State, met at the State capitol, on the 11th of April, and each house organized with a quorum present during the first week of the session.

The legislature remained in session to the 1st of June, when they adjourned until the first Monday in November, at which time they again met, and continued in session to the 1st of January of the present year, when they again adjourned until the 1st January, A. D. 1866.

During the session of April and May, 1864, the legislature elected two United States senators to fill the unexpired terms of William K. Sebastian and Dr. Mitchell, senators from that State previous to the commencement of the rebellion.

During the said session of the legislature they passed an act defining the qualification of voters, which shows most clearly that they entertain no sympathy or fellowship with the rebellion. The sixth section of that act is in the following words:

*And be it further enacted by the general assembly of the State of Arkansas, That each voter shall, before depositing his vote at any election in this State, take an oath that he will support the Constitution of the United States and of this State, and that he has not voluntarily borne arms against the United States, or this State, nor aided, directly or indirectly, the so-called confederate authorities since the eighteenth day of April, A. D. 1864, (the day the governor was inaugurated,) said oath to be administered by one of the judges of the election; and this act shall take effect from and after its passage.*

This act shows a commendable prudence on the part of the legislature to guard the ballot-box against the disloyal part of the people. While the constitution makes no provision against returned rebels who were once citizens of the State, this prompt legislation shows that the people are determined to guard themselves in the future against those who have well nigh ruined their State in the past.

Arkansas has given another proof of her loyalty and devotion to the United States, which should not be overlooked. From evidence which your committee have no disposition to discredit, it appears that Arkansas has furnished at least ten thousand volunteer soldiers for the United States armies. These men are to-day either filling a soldier's grave, or the ranks of their country's armies.

At the election in March, 1864, the people of the first congressional district elected T. M. Jacks as their representative in Congress, by a



vote of about three thousand. The second district elected A. A. C. Rogers, by a large majority over his competitor. The third district, J. M. Johnson, by a very large majority.

The first district is composed of the following named counties: Arkansas, Conway, Crittenden, Craighead, Fulton, Greene, Independence, Izard, Jackson, Lawrence, Mississippi, Monroe, Philips, Poinsett, Prairie, Randolph, St. Francis, Searcy, Van Buren, and White. These counties by their returns show that in the presidential election in 1860 they cast 16,841 votes. Fourteen of these counties, viz., Arkansas, Conway, Crittenden, Fulton, Independence, Izard, Jackson, Lawrence, Monroe, Philips, Prairie, Randolph, and Van Buren, which participated pretty fully in the election of March, cast the aggregate vote of 3,000. These counties in 1860 gave 14,005 votes—the six counties not voting, or voting to only a very limited extent, in the election of March, to wit: Craighead, Greene, Mississippi, Poinsett, Searcy, and St. Francis, gave, in 1860, 2,836 votes; these, under the ratio of the vote cast in the eleven counties that did vote, should have given about 537 votes at the March election. Of the 3,000 votes cast in this district for member of Congress, T. M. Jacks received all but *fifteen*.

In the second district, composed of the counties of Ashley, Bradley, Calhoun, Chicot, Clark, Columbia, Dallas, Desha, Drew, Hempstead, Hot Springs, Jefferson, La Fayette, Ouachita, Pulaski, Saline, and Union, your committee have not been able to satisfy themselves as to the vote cast; the evidence going to show that in this district the vote was respectable as compared to the whole vote of the State—that some four or five counties did not vote in the election, and that the vote of the counties of Jefferson and Pulaski was relatively large.

In the third district, composed of the counties of Benton, Carroll, Crawford, Franklin, Johnson, Madison, Marion, Montgomery, Newton, Perry, Pike, Polk, Pope, Scott, Clark, Sebastian, Sevier, Washington, and Yell, the vote in March was a tolerably full one, all except the county of Perry participating in the election.

In this district the vote for representative in Congress was nearly five thousand, of which vote J. M. Johnson received over four thousand. These counties in 1860 gave an aggregate vote of 16,932.

The position taken by the committee in the case of Mr. Bonzano, of Louisiana, will apply with equal force to these cases from Arkansas. In the report in that case the committee say:

This election depends for its validity upon the effect which the House is disposed to give to the efforts to reorganize a State government in Louisiana, which have here been briefly recited. The districting of the State for representatives and the fixing of the time for holding the election, were the acts of the convention. Indeed, the election of governor and other State officers, as well as the existence of the convention itself, as well as its acts, are all parts of the same movements.

It is objected to their validity that they neither originated in nor followed any pre-existing law of the State or nation. But the answer to this objection lies in the fact that, in the nature of the case, neither a law of the State nor nation to meet the case was a possibility. The State was attempting to rise out of the ruin caused by an armed *overthrow* of its laws. They had been trampled in the dust; and there existed no body in the State to make an enabling act. Congress cannot pass an enabling act for a State. It is neither one of the powers granted by the several States to the general government, nor necessary to the carrying out of any of those powers; and all "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or the people." It is preposterous to have expected at the hands of the rebel authorities in Louisiana that, previous to the overthrow of the State government, they should prepare a legal form of proceeding for its restoration. In the absence of any such legal form prepared beforehand in the State, and like absence of power on the part of the general government, under the delegated powers of the Constitution, it follows that the power to restore a lost State government in Louisiana existed nowhere, or in "the people," the original source of all



political power in this country. The people, in the exercise of that power, cannot be required to conform to any particular mode, for that presupposes a power to prescribe outside of themselves, which it has been seen does not exist. The *result* must be republican; for the people and the States have surrendered to the United States, to that extent, the power over their form of government in this, that "the United States shall guarantee to every State a republican form of government."

It follows, therefore, that if this work of reorganizing and re-establishing a State government was the work of the people, it was the legitimate exercise of an inalienable and inherent right, and, if republican in form, is entitled not only to recognition, but to the "guarantee" of the Constitution.

The committee recommend to the House for its adoption the subjoined resolutions:

*Resolved*, That T. M. Jacks is entitled to a seat in this House as a representative from the first congressional district in Arkansas.

*Resolved*, That J. M. Johnson is entitled to a seat in this House as a representative from the third congressional district in Arkansas.

---

WASHINGTON CITY, D. C., May 10, 1864.

HON. H. S. DAWES, *Chairman Committee of Elections*:

SIR: Permit us to present to you, and through you to the committee of which you are chairman, the accompanying statement, detailing a condensed history of

#### SECESSION AND REORGANIZATION IN ARKANSAS.

A majority of the voters of Arkansas were opposed to secession at the election on the 18th of February, A. D. 1861, for members to a convention. There were in that election about 11,000 majority of Union votes cast, and about 9,000 voters did not go to the polls. It may safely be assumed that all who staid away from the election were Union men. The secessionists mustered their full strength, while Union men, not realizing the threatened danger, were disposed to treat this election as rather a farce than as the fearful reality it has since proved to have been. That election, allowing for several secesh conventions between the day of the election and the meeting of the convention, returned *thirty-four secessionists and forty Union men*. The convention remained thus divided during its boisterous session of the month of March. It finally adjourned, subject to the call of its president, having accomplished nothing save that it did agree to refer the entire question of Union or secession back to the people, to be voted upon the ensuing August. Soon after the adjournment of the convention Sumter was fired upon; Mr. Lincoln issued his proclamation calling for 75,000 men; the president of the adjourned convention, by proclamation, convened said convention early in May; on the 6th an ordinance of secession was passed, and immediately thereafter the convention dispatched its commissioners to Montgomery, Alabama, to ally the State with those forming the new confederacy. This was done without at all consulting the people; and thus was inaugurated a reign of desolation, terror, and blood, the like of which the world has seldom if ever seen. Men of little practical worth, and of less morals than worth, became the apostles of this new doctrine; they belabored the people at every town, hamlet, by-place, and country cross-road, or dram-shop. They descanted at large upon the glories, the magnificence, the uncomputed wealth, the surpassing grandeur, of a southern confederacy; the laborer of to-day under the old government was to be a nabob, a moneyed prince, of the new confederacy; he that hesitated, that doubted, that could not realize all that was told him, and more, was a submissionist, a coward, a traitor, a foggy, a fool, a fit associate only for the ascetic, cold, plodding, heartless, soulless northerners, whose treachery and crimes were painted darker than Erebus. Such an one should not dare think of mingling in the society of the élite, dashing, chivalrous southerner, in whose veins flowed the best blood of all nations, and whose transcendent virtues were plucked direct from the throne of the Eternal. Indeed, the Devil never labored half so hard to beguile mother Eve as did secessionists to deceive Union men.

Volunteer soldiers were called for to fight the battles, if battle should be needed, of this "golden government." There, however, was to be no fight; the "vandal hordes" were to quail and flee before southern daring. But fluent declamation and beautiful imagery could not stultify a large portion of the practical, thinking, patriotic Union men of Arkansas; they would not volunteer into the new service. For their benefit the confederate conscription of May, 1862, was most graciously tendered. By this they were *forced* into the army or compelled to flee their homes to the swamps or mountain fastnesses, there to be hunted down like wild beasts by devils and hounds. By the



rigor of the confederate conscription the State was almost depopulated of men until the people were relieved by the federal armies.

There were several regiments and parts of regiments of Arkansas troops raised prior to General Steele's occupation of Little Rock, details of which can be furnished if needed.

In September, 1863, General Steele occupied Little Rock, and General Blunt, Fort Smith. A large portion of the State, by those movements, was rescued from the confederate despotism; the swamps, the canebrakes, the mountain gorges gave up their long-hidden treasures, and, like the fabled hosts of Attila, men seemed to rise as by magic out of the ground and flock to the standards of Steele and Blunt. There are now between seven and ten thousand true and tried Arkansians bearing arms in the federal service.

Very soon after the federal occupancy of the State the reorganization movement commenced. Large and enthusiastic reorganization meetings were held all over the liberated portion of the State. In November the third congressional district, composed of the counties of Marion, Carroll, Madison, Benton, Washington, Newton, Pope, Yell, Perry, Johnson, Franklin, Crawford, Sebastian, Scott, Polk, Montgomery, Clark, Pike, and Sevier, elected, by a vote of over 4,000, Colonel J. M. Johnson as a member to the United States Congress. In December a number of staunch, prominent Union men of the State visited Washington City to see and confer with the President and with Congress, to learn what the State could do or what she ought to do. Early in January, 1864, a convention, composed of delegates from about one-half the counties of the State, assembled in Little Rock. After nearly three weeks' deliberation they agreed upon a plan of reorganization. They amended, in a few important particulars, the old State constitution, a copy of which, as amended, is herewith forwarded. They appointed a provisional governor, lieutenant governor, and secretary of state. They provided for an election, to be held on the 14th, 15th, and 16th of March, at which election the voters of the State were not only called upon to vote for all State, district, and county officers, but to vote upon the acts of said convention, approving or rejecting the same. While the convention were working at Little Rock, the Arkansas citizens in Washington had not been idle. They had represented to the President the great solicitude of their people at home. The President, not knowing of the action of the convention, ordered Major General Steele, commanding, to have an election in the State, to take effect on the 28th of March. There was no previously arranged concert between the Arkansas citizens in Washington and the members of the convention; but so great and all-absorbing was the one grand question, that of State reorganization, that there was not the slightest conflict in the results of their proceedings save a difference of two weeks' time in the day set for holding the election; and, what is still more remarkable, the day set apart by the President was that first fixed upon by the convention; but, upon mature deliberation, it was thought that the people could be as well prepared for the election by the 14th as they could by the 28th, and that Arkansas had no time to lose in so important a measure. The President, after issuing his first order for an election, became advised of the action of the convention, and immediately countermanded his first order, and instructed General Steele "to keep the convention on its own way" by holding the election on the 14th, 15th, and 16th of March, as provided by the convention. You will perceive that the election in Arkansas was held not only in accordance with the promptings of a general uprising of the Union sentiment of the State, but in obedience to a positive order of the President of the United States.

That election ratified the constitution and ordinances of the convention by a vote of more than 12,000, elected a governor, a lieutenant governor, a secretary of state, an auditor of public accounts, a State treasurer, an attorney general, three supreme judges, three members to Congress, one from each district, as per apportionment under act January 19, 1861, six circuit judges, seven prosecuting attorneys, twenty-three out of twenty-five State senators, and fifty-nine out of seventy-five representatives to the legislature, all of which will more fully appear from the governor's proclamation of April 11, a copy of which is herewith forwarded.

By a reference to dates you will perceive that reorganization in Arkansas commenced several weeks prior to the issuance of the President's amnesty proclamation of December 8, 1863, which was not generally received in Arkansas till some two or three weeks later. The people, though possibly not approving that proclamation in all its details, laid hold of it as an anchor of hope; it infused new life and vigor into the reorganization movement throughout the State.

The people held their elections buoyant with hope, never doubting for a moment the faith of the government that if they complied with expressed requirements of that proclamation their acts should be valid, and they entitled to all the benefits therefrom arising. The State gave largely more than twice the number of votes required of her in that proclamation, and the votes given were not confined to one or two small and crowded localities. Arkansas has no large cities. She has fifty-five counties; by a reference to the governor's proclamation you will perceive that forty-three of these are represented in the lower house of the State legislature. Her congressmen were elected



each in his own district by a vote bearing a fair ratio to the vote in 1860, as compared with the whole State vote, now compared to the whole vote of 1860.

The first district is composed of the counties of Greene, Mississippi, Craighead, Randolph, Lawrence, Fulton, Izard, Searcy, Van Buren, Independence, Jackson, Poinsett, Crittenden, Saint Francis, White, Conway, Prairie, Arkansas, Monroe, and Phillips. These twenty counties in 1860 had a white population of 112,310 persons; allowing one vote for every six persons, the ratio of the presidential vote of the State for that year would give this district a voting population at that time of 18,718. In the election of the 14th, 15th, and 16th March it gave a vote of something more than 3,000, fully one-sixth of the vote of 1860. In this district six counties, Greene, Craighead, Mississippi, Poinsett, Randolph, and Searcy, are not represented in the lower house of the State legislature. The people of these counties were deterred from voting by bands of confederate soldiers in the rear of General Steele.

T. M. JACKS, MEMBER ELECT.

In the counties of the first district not represented in the State legislature there were, in 1860, 24,651 white persons, representing 4,113 voters, which number, subtracted from the whole number, 18,718, leaves no less than 14,605 voters of 1860 represented now in the legislature by the vote of the 14th, 15th, and 16th March.

A. A. C. ROGERS, MEMBER ELECT.

In the second district the counties not represented in the legislature had, in 1860, a white population of 24,008, equal to 4,001 voters, which, taken from the whole number, 15,096, leaves 11,095 voters of 1860 now represented in the State legislature.

J. M. JOHNSON, MEMBER ELECT.

In the third district—the county of Perry the only one not represented in the legislature—there were, in 1860, 2,162 white persons, making 360 voters; these taken from 20,298 leave 19,938 voters of 1860 now represented in the State legislature.

The second district is composed of the counties of Pulaski, Saline, Hot Springs, Jefferson, Dallas, Bradley, Drew, Desha, Chicot, Ashley, Calhoun, Union, Onachita, Columbia, Hempstead, and Lafayette. This district, in 1860, had a white population of 90,562, giving, for the same time, 15,096 voters; this district returned its member by a vote of more than 2,000; in this district the counties of Ashley, Chicot, Columbia, Desha, and Union have no representatives in the legislature.

The third district, composed of the nineteen counties before mentioned that elected Colonel Johnson to Congress in November, 1863, had, in 1860, a white population of 121,788, giving, as per ratio adopted, 20,298 voters at that time. They now give a vote of more than 5,000. All the counties of this district are represented in the legislature except Perry.

Of the voters of 1860 we think we are safe in saying that more than one-half of them have been forced from the State or into the rebel armies. Of those remaining in the State and not in the confederate armies, we think fully one-half voted; and of those who have *proved* their loyalty by voluntarily subscribing the President's amnesty oath, more than four-fifths of them voted.

The legislature met in Little Rock on Monday, the 11th of April. The senate organized on Tuesday, with seventeen members present; the house not till Friday, there not being a quorum in attendance until that day. The two houses have been regularly in session ever since. The latest intelligence we have from them they had chosen one United States senator, and were balloting for the other. The governor, Isaac Murphy, was duly and formally inaugurated on Monday, the 18th April. All the other officers of the State have been qualified and properly inducted into office. County and township officers, such as sheriffs, clerks, county and probate judges, treasurers, coroners, school commissioners, internal improvement commissioners, justices of the peace, and constables, were elected at the late election for most of the counties. For those that could not hold their elections in March there is ample provision made, as you will see by a reference to the schedule appended to the constitution.

You will thus perceive that the machinery of our State is fully at work; that it is as yet a little *rough*. That it needs a little "grease" we, as well as any one else, do know; but that the earnest will and the indomitable energies of the people will make it "go" is not to be questioned, by any one cognizant of the facts, for a moment.

In conclusion permit us to say, in behalf of our people, that Union men in Arkansas have suffered what the world may imagine but can never know; they have passed through ordeals of sophistry and lies, fire and sword, pestilence and famine, terror and blood; and to-day they stand forth the purified monuments of constancy and patriotism, willing still to make further sacrifices for country and principle. We present them to you, believing them worthy your most earnest and serious consideration. We



present them as true men, not as quasi secessionists, not as half-reclaimed rebels. They know that by the terrible convulsions of the last three years the pride of their State has been humbled, but they suffer no man to insinuate, that their honor has been compromised or themselves thereby disgraced. They feel but too keenly the pierce of this barb, perhaps unintentionally, but too often hurled at them by men whose good fortune it has been to live where loyalty was fashionable, where loyalty was popular. Permit us to say, for our people, that none but the southern Union man can ever know the highest cost of loyalty. From our more fortunate brothers we expect all the rights, franchises, and amenities due American citizens. We ask nothing more; we are willing to receive nothing less. We come not as paupers, asking charity, but as equals, claiming justice.

Hoping this condensed statement may be of service to your committee in arriving at conclusions which shall be alike just and generous to the suffering people whom we have the honor to represent,

We subscribe ourselves, most respectfully, yours,

T. M. JACKS.  
J. M. JOHNSON.  
A. A. C. ROGERS.

## PROCLAMATION.

EXECUTIVE OFFICE,  
*Little Rock, April 11, 1864.*

In accordance with the provisions of the schedule appended to the constitution adopted by the late convention of the State of Arkansas, I, Isaac Murphy, provisional governor of said State, do hereby make proclamation that, at an election held on the 14th, 15th, and 16th days of March, 1864, the constitution and ordinances of said late State convention were ratified within the meaning of the President's proclamation of December 8, 1863, and that the vote for and against the constitution and ordinances was as follows:

Constitution and ordinances, ratified, twelve thousand one hundred and seventy-seven votes.

Constitution and ordinances, rejected, two hundred and twenty-six votes.

And I further certify that the following named persons were elected to the various offices hereinafter named, to wit:

Robert J. T. White, secretary of state; James R. Berry, auditor of public accounts; E. D. Ayres, treasurer of state; Charles T. Jordan, attorney general; C. A. Harper, T. D. W. Yonley, and Elisha Baxter, supreme judges.

*Elected to Congress.*—1st district, T. M. Jacks; 2d district, A. A. C. Rogers; 3d district, J. M. Johnson.

*Judges of circuit courts elected.*—1st judicial circuit, J. M. Hanks; 2d judicial circuit, R. A. Whitmore; 3d judicial circuit, ————; 4th judicial circuit, Thomas W. Pounds; 5th judicial circuit, W. M. Matheney; 6th judicial circuit, ————; 7th judicial circuit, ————; 8th judicial circuit, Elias Harrell; 9th judicial circuit, A. N. Hargrove.

*Prosecuting attorneys elected.*—1st judicial circuit, J. T. Moore; 2d judicial circuit, R. V. McCracken; 3d judicial circuit, ————; 4th judicial circuit, Joseph Cravens; 5th judicial circuit, S. W. Williams; 6th judicial circuit, ————; 7th judicial circuit, W. B. Pagett; 8th judicial circuit, Thomas H. Patton; 9th judicial district, J. R. Steele.

## MEMBERS ELECTED TO THE LEGISLATURE.

*Senators.*—1st senatorial district, E. D. Ham; 2d senatorial district, John McCoy; 3d senatorial district, Jesse M. Gilstrap; 4th senatorial district, Luther C. White; 5th senatorial district, Charles Milor; 6th senatorial district, William Stout; 7th senatorial district, F. M. Stratton; 8th senatorial district, Thomas Jefferson; 9th senatorial district, King Bradford; 10th senatorial district, E. D. Rushing; 11th senatorial district, J. J. Ware; 12th senatorial district, J. M. Lemmons; 13th senatorial district, A. B. Fryrear; 14th senatorial district, T. Lamberton; 15th senatorial district J. Q. Taylor; 16th senatorial district, Trueman Warner; 17th senatorial district, no returns; 18th senatorial district, I. C. Mills; 19th senatorial district, W. C. Valandigham; 20th senatorial district, R. H. Stanfield; 21st senatorial district, no returns; 22d senatorial district, W. H. Harper; 23d senatorial district, E. W. Gilpin; 24th senatorial district, L. D. Cantrell; 25th senatorial district, E. H. Vance.

*Representatives.*—Arkansas County, G. C. Cooper; Bradley County, W. W. Scarborough; Washington County, John Pearson, W. H. Nott, M. H. Patton, and ——— Waddle; Benton County, R. H. Whimpey, Jesse Shortess; Madison County, T. H. Scott, G. W. Seamans; Carroll County, J. W. Plumley, J. F. Seamans; Newton County, James R.



Vanderpool; Crawford County, John Austin, J. G. Stephenson; Franklin County, F. M. Nixon; Johnson County, John Rogers, A. P. Melson; Pope County, Robert White; Marion County, J. W. Orr; Conway County, G. N. Galloway; Yell County, B. Johnson; Van Buren County, L. M. Harris; Izard County, J. B. Brown; Independence County, J. Clabb, A. Harper; White County, J. J. Randall; Jackson County, A. J. McLaren; Lawrence County, Reed Shell, Ephraim Sharp; Fulton County, Simpson Mason; St. Francis County, R. H. Moore, C. S. Stile; Crittenden County, F. Thursby; Philips County, J. A. Butler, J. F. Hanks; Monroe County, E. Wild; Jefferson County, H. B. Allis, D. C. Hardeman; Pulaski County, O. P. Snyder, L. S. Holeman; Prairie County, J. B. Claibourne; Drew County, Wm. Cox, F. H. Boyd; Dallas County, James Kennedy; Ouachita County, J. W. Neill; Calhoun County, E. A. Ackerman; Clark County, J. H. Green; Montgomery County, J. C. Priddy; Pike County, M. Stinnette; Hempstead County, Jas. Bowen, L. Worthington; Sevier County, Jno. Gillcoat, N. Musgrove; Lafayette County, J. C. Hale; Saline County, Warren Holleman; Hot Spring County, Thomas Whitten; Sebastian County, J. R. Smoot, Jacob Snyder; Scott County, Thomas Cauthorn; Polk County, John Wear.

All of which appears of record, according to the poll-books returned and now on file in this office.

In testimony whereof, I, Isaac Murphy, provisional governor of the State of Arkansas, have set my hand, (there being no seal of office.)

Done at Little Rock, this day and date above written.

ISAAC MURPHY,  
*Prov. Governor of Arkansas.*

OFFICE SECRETARY OF STATE,  
*Little Rock, Ark., April 23, 1861.*

This is a true copy of the proclamation on file in this office.

ROBERT J. T. WHITE,  
*Secretary of State.*



## THIRTY-NINTH CONGRESS, FIRST SESSION.

## COMMITTEE OF ELECTIONS.

Messrs. DAWES, of Massachusetts.  
SCOFIELD, of Pennsylvania.  
BAXTER, of Vermont.  
UPSON, of Michigan.  
MARSHALL, of Illinois.

Messrs. PAINE, of Wisconsin.  
SHELLABARGER, of Ohio.  
MCCLURG, of Missouri.  
RADFORD, of New York.

Mr. Paine resigned his place at the commencement of the second session, and Mr. Poland, of Vermont, took his place.

## ALEXANDER H. COFFROTH AND WILLIAM H. KOONTZ.

This was a *prima facie* case where the governor omitted to declare any person elected. The House gave Coffroth the seat pending the contest on the merits.

January 26, 1866.—Mr. Upson, from the Committee of Elections, made the following report:

*The Committee of Elections, to whom were referred the certificates and all papers relating to the election in the sixteenth congressional district of Pennsylvania "with instructions to report, at as early a day as practicable, which of the rival claimants to the vacant seat from that district has the prima facie right thereto, reserving to the other party the privilege of contesting the case upon the merits, without prejudice from lapse of time or want of notice," having considered the said certificates and papers so referred, submit the following report:*

It appears from the said certificates and papers so referred, that Alexander H. Coffroth and William H. Koontz each claims to have the *prima facie* right to the vacant seat in question, and each of said claimants has appeared in person before the committee, and also by attorney, and been heard in support of his respective claim.

By the general election law of Pennsylvania, (Purdon's Digest, 8th ed., 1853, pages 287, 288, 289, 293, sections 59, 60, 63, 64, 65, and 113,) when two or more counties compose a district for the choice of a member of the House of Representatives of the United States, it is provided, after an election has been held, that the judges of election in each county having met, the clerks shall make out a fair statement of all the votes which shall have been given at such election, within the county, for every person voted for as such member, which shall be signed by said judges and attested by the clerks; (section 63;) and one of the said judges is to take charge of said certificates of votes, and produce the same at a meeting of one judge from each county, at such place in such district as is, or may be, provided by law for that purpose. The judges of the several counties (composing such district) having met as afore-said, are then required (section 64) to cast up the several county returns and make duplicate returns of all the votes given for such office of representative in Congress in said district, and of the name of the person elected, and to deposit one of said returns for said office of representative in the office of the prothonotary of the court of common pleas of the county in which they shall meet, and to place the other return in the nearest post office, sealed and directed to the secretary of the Commonwealth.

The said return judges are also required (section 65) to transmit to



the person elected to serve in Congress a certificate of his election, within five days after the day of making said return.

On the receipt of the return of the election of members of the House of Representatives of the United States, as aforesaid, by the secretary of the Commonwealth, the governor is required (section 113) to declare, by proclamation, the names of the persons so returned as elected in the respective districts, and also to transmit, as soon as conveniently may be thereafter, the returns so made to the House of Representatives of the United States.

The sixteenth congressional district of Pennsylvania is composed of the counties of Adams, Bedford, Franklin, Fulton, and Somerset.

The governor of Pennsylvania, in his proclamation of the date of December 26, 1864, declaring the names of the persons returned as elected in the respective congressional districts in said State, omitted to declare the name of any person as returned elected in the sixteenth district, as appears from the certified copy of said proclamation accompanying this report, (paper 1,) referred to the committee, but states therein "that no such returns of the election in the sixteenth congressional district have been sent to the secretary of the Commonwealth as would, under the act of assembly of July 2, A. D. 1839, authorize me to proclaim the name of any person as having been returned as duly elected a member of the House of Representatives of the United States for that district." Said act of July 2, 1839, is the law hereinbefore referred to.

Neither of the claimants, then, having any *prima facie* right to the seat, under the governor's proclamation, the committee next proceeded to examine the official return made by the return judges of said district of all the votes given for said office of representative in Congress in said district as cast up by said judges from the returns from the several counties therein.

The committee found, among the papers so referred to them, two papers, (papers 2 and 4,) each on its face purporting to be such return, and might have been in some doubt as to which was the genuine official return, each being signed by a different set of return judges, save that the name of Nathan Winter is affixed to each as the return judge from Fulton County, and the paper purporting to be a return in favor of Mr. Coffroth (paper 4) is signed by only four judges, while the paper purporting to be a return in favor of Mr. Koontz is signed by five; but they were relieved from any doubt on this subject by the admissions of the respective claimants made before the committee, and by the statement of facts contained in the opinion of the attorney general of Pennsylvania, Mr. Meredith, submitted to the governor of said State on this same point, which opinion (page 32) each of the claimants laid before the committee and admitted in evidence, so far as the statement of facts therein given is concerned, for their consideration and action in determining the question of the *prima facie* right of the claimants to the vacant seat.

Aided by the light thus thrown upon the case, the committee were unanimously of opinion that the persons signing the said return in favor of Mr. Koontz were not the legally constituted board of return judges for said district, and had no lawful authority to make any such return, and that the four persons signing the said return in favor of Mr. Coffroth were a majority of the legal return judges, and the only lawful board. It was admitted that both the so-called boards met and acted on the same day, but the Koontz board a little earlier in the day than the other; both on the day and at the place fixed by law. Four of the five legal return judges, therefore, being found to have certified (paper 4) that Mr. Coffroth had received 9,475 votes, and Mr. Koontz 8,462 votes, and that



Mr. Coffroth had "received a majority of all the votes cast as counted before the board, and is declared duly and legally elected a member of the House of Representatives of the United States," and that he had been awarded a certificate of election, it is difficult to explain why this return, thus made and certified by these return judges, does not show a *prima facie* right in Mr. Coffroth to the seat in question.

But it is claimed on the part of Mr. Koontz that the said return shows on its face that the county of Somerset was not included by the said return judges in the count, and, therefore, that the return is void, though it also appears in the return, and also in the opinion of the attorney general, above referred to, that the return judge of Somerset County was present at Chambersburg on the day of the meeting, and was notified thereof, but neglected or refused to attend.

The attorney general, in his said opinion, (page 32,) also takes this position, and claims that the district judges ought to have adjourned over, and referred to duplicate originals of the returns for Somerset county, which he says were accessible in the office of the prothonotary of said county of Somerset.

To this it may be replied, that the statute makes no provision for any such adjournment or proceeding, and it does not appear by the said statute that, in case where a congressional district is composed of several counties, any such duplicate original is required to be filed in each of the counties of the district, but the original statement of votes given in each county for representative in Congress, certified by the judges and attested by the clerks, is directed (section 63) to be taken charge of by one of said judges, who "shall produce the same at a meeting of one judge from each county at such place in said district as is or may be appointed by law for that purpose;" and when the district return judges have met and cast up said returns, and made duplicate returns of all the votes given for such office in such district, it is then, and not till then, required (section 64) that one of said duplicate returns so made by said district return judges shall be filed in the office of the prothonotary of the court of common pleas of the county in which they shall meet.

The return judge of Somerset county, therefore, in thus absenting himself from the meeting of the board, and withholding from the other legal return judges the returns from his county, and in thus co-operating with an illegal board in endeavoring to give a certificate to Mr. Koontz, was manifestly acting in direct violation of law, and in disregard of his official duty.

It is now claimed on behalf of Mr. Koontz that this voluntary neglect of duty on the part of his friend, the return judge of Somerset county, shall be made to redound to his benefit, and that he shall, in fact, be placed in a better position than if said judge had done his duty; for it appears that if the actual vote of Somerset county (paper 6) had been handed in by said judge to said board and added to the other returns made to the board, and included in their computation, the result would still have been the same, and in favor of Mr. Coffroth.

The aggregate returns before the board, from all the counties composing the district, would then have been as follows:

	Coffroth.	Koontz.
Adams.....	2,707	2,366
Bedford.....	2,504	2,053
Franklin.....	3,457	3,508
Fulton.....	807	535
Somerset.....	1,592	2,512
Total.....	11,067	10,974



Leaving Coffroth a majority of 93 on the face of the official returns from all the counties of the district.

In addition to this we have also the certificate of the return judges, (paper 16,) transmitted to Mr. Coffroth as required by law, (section 65,) being the official certificate of his election, which in the omission apparent on the face of the governor's proclamation would seem to *prima facie* entitle him to the seat. The certificate of Mr. Koontz, (paper 15,) being signed, as we have seen, by persons not legal return judges, is, of course, wholly illegal and void.

It is difficult to perceive the correctness or force of the reasoning which, while recognizing the majority of the return judges as the legal board and competent to act, yet in effect makes all their acts illegal and void, because one of the return judges of the district voluntarily neglected or refused to attend the meeting of the board and withheld from the board the returns from his county; thus in effect allowing a minority of one sort of veto power over the majority.

The return certified by the majority certainly embraces the counties of Adams, Bedford, Franklin, and Fulton, and is an official certificate of all the returns presented, and of the aggregate returns of votes from these counties; and as the vote of Somerset county is undisputed and would not have changed the result, we see no occasion or justification, on a *prima facie* hearing, for going beyond the action of these return judges who met on the day and at the place fixed by law, and did all that the law required them to do.

If, however, we should waive this position and go beyond, not behind, the action of the district return judges, it would only be to ascertain the vote of Somerset county; and that being obtained and added to the other certified returns, as we have seen, still gives Mr. Coffroth the certified majority of all the votes cast in the district and the *prima facie* right to the seat.

Clearly the district board of return judges had no right to go behind the certified returns brought by each return judge from his county, and in determining a *prima facie* right to a seat the same rule would seem applicable to and binding upon the Committee of Elections and the House. But suppose we should see fit, in violation of this rule, to go behind the action of the district return judges, we come then next to the certified returns of the several boards of county return judges of each county in the district, which returns were not separately before the governor. In three of these, (papers 5, 6, and 7,) viz., Franklin, Somerset, and Fulton, all of the return judges unite in certifying the result, and the claimants each admitted before the committee, that on this hearing of a claim to the *prima facie* right to the seat, neither of them could go behind any one of these three returns thus certified.

The home vote of Bedford county is also certified (paper 8) by all of the return judges, and is undisputed by the claimant, but the soldiers' vote of Bedford county is certified by a majority of the return judges, (paper 9,) as 318 for Koontz, and 94 for Coffroth, while the minority of the return judges sign another return, (paper 10,) which, of course, is of no validity.

A majority of the return judges of Adams county certify to the returns of votes cast in that county, including the soldiers' vote, (paper 11,) giving Coffroth 2,707 votes, and Koontz 2,366.

The minority sign another return, purporting to include the home vote and the soldiers' vote, (paper 13,) but nothing appears on the face of the majority return, from either Adams or Bedford county, to show but what they constitute the whole board of return judges present for each of said counties.



Taking the majority return of the soldiers' vote in Bedford, and add to the return of the whole board of the same county of the home vote, and the majority return of the whole vote in Bedford county, and the unanimous return of the return judges from Franklin, Fulton, and Somerset, and on the face of those returns the vote is as follows, viz :

	Coffroth.	Koontz.
Adams .....	2, 707	2, 366
Bedford .....	2, 504	2, 058
Franklin .....	3, 457	3, 508
Fulton .....	807	535
Somerset .....	1, 592	2, 512
	<hr/> 11, 067	<hr/> 10, 979

Coffroth's majority, on the face of these certified returns from the return judges of these several counties composing the sixteenth congressional district, it will be seen, is 88, and he still has the *prima facie* right to the seat.

But it is claimed on the part of Mr. Koontz that all the return judges in each county must sign and certify the returns of that county; that the judges must act as a unit, and that if they do not so unite in signing the certificate, the certificate is void and the return is invalid. A similar position was taken by a democratic district board of return judges of the counties of Franklin, Fulton, Bedford, and Somerset, composing the sixteenth judicial district of Pennsylvania, in regard to a return of soldiers' votes for judge, certified by the majority of the county return judges of Bedford, the same as in this case, (paper 9,) and said district return judges assumed to reject the return of soldiers' votes for judge, so certified by the majority of the return judges of Bedford County, because said return was not signed by the remaining nine return judges of said county, and in this way overcame the majority for King, the Union candidate for judge, and gave the certificate to Kimmel, the democratic candidate, but included in their return a statement of this soldiers' vote, and the fact of their action in regard to it.

The governor referred the matter to the attorney general, and Mr. Meredith, on the 30th of November, 1864, in giving his opinion, uses the following language :

The district return judges of the sixteenth judicial district, composed of the counties of Franklin, Bedford, Somerset, and Fulton, have transmitted to the secretary of the Commonwealth a return, in which they state that they have not included the Bedford county return of soldiers' votes, a copy of which they annex, and they assign as the reason for not including it that said return was not certified to by nine of the return judges of Bedford county. The return in question is signed by thirteen of the county return judges, forming therefore a majority of the whole number.

*The reason assigned for not including this return is palpably insufficient.* As the authority of the return judges concerns matters of a public nature, a majority may act at a meeting lawfully assembled, and their meeting is presumed to be lawful in the absence of proof to the contrary. The clause of the 79th section of the act of 1839, providing that the returns shall be signed by all the judges present, does not govern the present case; and if it did, it would, 1st, be constructed as directory merely; and, 2d, it would be presumed that the return was signed by all the judges present in the absence of proof to the contrary.

A similar opinion, as to the power of a majority of the return judges to act in certifying returns, is given by said attorney general in the paper hereinbefore referred to, (paper 32,) and the majority of the committee fully concur in this opinion of the said attorney general of Pennsylvania, and consider a return, certified by a majority of the county return judges, as a good and valid return. In the case of the judge,



above referred to, the governor, acting upon the opinion submitted to him by the attorney general, counted the vote thus certified by the majority of the county return judges, a copy of it being contained in the return certified to the secretary of the Commonwealth, considering said certificate as valid under the laws of Pennsylvania, and as showing a *prima facie* right in Mr. King to the seat; and he accordingly awarded it to him by issuing to him the commission. This precedent would seem to be conclusive of this case. But neither the attorney general nor any other party in the case of the said district judge ever claimed the right on a *prima facie* case to go behind the return of a majority of the county return judges and inquire what other soldiers' votes or returns of votes, if any, had been rejected or not counted by them, much less to claim that a certificate of the minority of said return judges was of any legal authority, or was original evidence for any purpose on the investigation of a *prima facie* right.

But it is claimed, on the part of Mr. Koontz, not only that the act of the majority of the county return judges in certifying these returns from Adams and Bedford is void, but that the Committee of Elections and the House, in this investigation of the *prima facie* right to the seat, may not only go behind these returns from Adams and Bedford, but also in effect behind the unanimous returns of all the other counties of Franklin, Fulton, and Somerset, so far as the soldiers' vote is concerned. The statement of such a proposition on an investigation of this kind would seem to be sufficient for its own refutation. It would be attempting to hear the case on the merits, without given the claimants the opportunity of presenting their evidence in full; would be utterly disregarding all credentials, and would obliterate all distinction between a *prima facie* right on the certificates and papers from the proper certifying officers and a claim founded on the merits on a full hearing of all the evidence that might be adduced by either claimant in support of his claim. (See case of Jayne vs. Todd, vol. 1, page 1, Reports of Committees, 1st session 38th Congress.)

It should be borne in mind that by the resolution of the House referring this case to the committee, the committee are restricted in their first examination and report to the *prima facie* right of either claimant to the seat; and the committee are to determine this from the certificates and papers referred to them, including always the admission of the claimants themselves before the committee; but only those papers are to be considered which come from the proper certifying officers, and which those officers are authorized by law to make, and also which are pertinent to the case.

Many papers have been referred to the committee, which, on this hearing, are not evidence for any purpose.

From the legal certificates and returns of the district and county boards of return judges in this case, nothing appears in relation to the rejection of any soldiers' votes; and those who allege such rejection are compelled to look outside of these certificates and returns and resort to papers and statements, which are not legitimate evidence on this investigation, and which, without further proof, would few, if any of them, be evidence of themselves on the hearing of a contest on the merits.

It is claimed on the part of Mr. Koontz that the county board of return judges of Bedford county improperly rejected or omitted to count two of the returns (papers 19, 20, and 21) of soldiers' votes for that county, and that the return judges of Adams county also illegally rejected or failed to count eight of the returns (papers 22, 23, 24, 25, 26, 27, 28, and 30) of soldiers' votes for that county; and that if these votes



had been counted he would have had a majority of the votes for representative in Congress cast in the district.

While the committee are clear in their opinion that on this examination of the matter specifically referred to them in this case they have no right to go behind the official returns of the proper certifying officers, and especially not behind the returns of the county return judges, and that those certificates and returns in this case show that Mr. Coffroth has the *prima facie* right to the seat, and they so find and report, yet they will add that on an inspection of the papers presented before them on behalf of Mr. Koontz, purporting to be returns of soldiers' votes, on which he relies, they are satisfied that most of those so-called returns are, under the act of Pennsylvania of August 25, 1864, regulating elections in case of soldiers in actual military service, too defective on their face to pass a legal scrutiny, and were not entitled to be counted by the county return judges even if they had all been before said county return judges at the time of their meeting; for, while the said act is, in some of its provisions, liberal, and says (section 27) that "No mere informality in the manner of carrying out or executing any of the provisions of this act shall invalidate any election held under the same, or authorize the return thereof to be rejected," &c., yet there are many other provisions in regard to the manner of holding the elections, the appointing and qualifying election officers, the recording and certifying the oaths administered to them before entering upon their duties, the mode of keeping and certifying the poll-books and tally-lists showing the name and precise residence of each voter and the number of votes cast, and the mode of certifying and authenticating the returns of such vote, which are essential and material, (sections 2, 4, 5, 6, 7, 9, 10, 13, 14, 15, 16, 17, 18, 28, 32, 33, and 34,) and which must be substantially complied with to carry out the letter, spirit, and intent of the act, preserve the purity of elections, and properly guard the exercise of the elective franchise. The very language of the section quoted—"No mere informality," &c., (section 27)—necessarily implies that where there has not been a substantial compliance with any of the material requirements of the act, and which is apparent on the face of the papers themselves, then the returns are to be rejected, or set aside at least until an investigation is had on a contest on the merits.

One of these so-called returns for Bedford County, of an election claimed to have been held at Barracks No. 1, Soldiers' Rest, Washington, D. C., shows on the poll-book the names of only forty-eight electors as voting, which list is certified by the clerks and judges as correct; and yet the same clerks and judges of election return an aggregate of eighty-seven votes as cast for representative in Congress, or thirty-nine more votes than electors voting, which is manifestly an absurd and illegal return, and should not, and could not, have been counted by the county return judges. The return also gives no company or regiment (section 7) to which the soldiers belong, nor states any facts or circumstances to bring them within any of the special provisions of section 2 of the act, which could authorize them to open a poll or hold an election there.

So also the poll-book in the other so-called return for Bedford County, purporting to be for Company H, 208th regiment, (paper 19,) shows only thirty-six electors from Bedford County, while the return gives fifty-six votes for representative in Congress. If it be claimed that the poll-book shows the names of electors from other counties, it is a conclusive reply that the law (section 7) expressly says that "Separate poll-books shall be kept, and separate returns made, for the voters of



*each city or county;*" and we see no authority given to the return judges of Bedford County to count votes cast for other counties, and especially when, as in the case of this last return, some of the electors reside in counties not within the congressional district.

Of the eight alleged as rejected returns for Adams County, the three from the hospitals, viz: Mower, Cuyler, and McClellan, (papers 23, 24, 25,) are by all the committee admitted to be too defectively certified and authenticated to be entitled to any consideration. The law in relation to the certifying, signing, and returning with the poll-book the evidence of the administering the oath to the officers of the election (sections 5 and 15) was wholly disregarded. (See also on this point the case of *Blair vs. Barrett, Bartlett's Contested Election Cases*, page 315, and cases there cited.) So also in the case of Company C, 202d regiment, (paper 22,) where only one judge of election appears to have been appointed, or sworn, or acted, the committee were alike unanimous in their opinion that the return was invalid, (sections 4 and 5,) the law expressly requiring three. (See also *Howard vs. Cooper, Bartlett's Contested Election Cases*, page 282.) The returns of Company I, 210th regiment, (paper 35,) do not show that two of the judges or the clerks were sworn, a certificate of which the law (sections 5 and 15) expressly requires. (See also case of *Blair vs. Barrett*, above cited.) The returns for Companies B and G, 138th regiment, (paper 39,) show that these two companies voted together at one poll and having the same election officers, both judges and clerks. The law (section 2) directs that a poll shall be opened in each company, and that all electors belonging to such company, and within one mile of the quarters on the day of election, and not prevented by orders, &c., from returning to the quarters, shall vote at such poll. The return shows officers of both companies participating in the election, indicating regular company organizations, and does not set forth any of the facts to bring the electors within any of the exceptional clauses of the statute, (sections 2, 32, and 33.) The returns for Company B, 21st Pennsylvania cavalry, either show the judges and clerks of election to have been sworn before one James Mickle, who was not an officer of the election and had no authority (section 5) to administer such oath, or else that neither of the judges or clerks of election were sworn, and in either case is in violation of the law, (sections 5 and 15.) The poll-book or list of electors voting at said election is not certified as required by law, (section 15,) nor were separate poll-books kept or separate returns made (section 7) for the voters of each city or county; but it would appear from what is claimed to have been intended for a list of the electors that there were forty-four whose names and residences are given—four from Franklin County, one from York, and thirty-nine from Adams County—while forty-one votes are certified as cast for representative in Congress, being two more than there were electors for Adams County.

The remaining return for Adams County, Company K, 184th regiment, (paper 30,) being 21 for Coffroth and 39 for Koontz, would not, if it had been counted, have changed the result, but would still have left a majority of 70 for Mr. Coffroth. There are other objections which might be raised as to the legality of many of said returns so presented, but the foregoing are instanced as apparent on a first inspection. How many of these objections might be removed by other evidence on a full hearing upon the merits the committee are not now called upon to say, nor do they know what the facts may be which relate to the validity of the elections so held, and as to which the returns appear to be so defective. But these returns, whether legal or not, are not proper to be considered on this



investigation. When on a contest on the merits the facts may be fully developed, if any legal votes are found to have been omitted in the count, full and final justice may then be done both to the voters and to the respective claimants; but until such an investigation is had, the committee, on the question of a *prima facie* right to the seat, feel constrained to abide by those precedents and rules of law which experience has proved to be the safest guides in weighing and determining impartially questions of this nature.

The committee therefore recommend the adoption of the following resolutions:

*Resolved*, That Alexander H. Coffroth, upon the certificates and papers relating to the election in the sixteenth congressional district of the State of Pennsylvania, has the *prima facie* right to the vacant seat from that district, and is entitled to take the oath of office and occupy a seat in this House as the representative in Congress from said district, without prejudice to the right of William H. Koontz, claiming to have been duly elected thereto, to contest his right to said seat upon the merits.

*Resolved*, That William H. Koontz, desiring to contest the right of Hon. Alexander H. Coffroth to a seat in this House as a representative from the sixteenth district of the State of Pennsylvania, be, and he is, required to serve upon the said Coffroth, within fifteen days after the passage of this resolution, a particular statement of the grounds of said contest, and that the said Coffroth be and he is hereby required to serve upon the said Koontz his answer thereto within fifteen days thereafter, and that both parties be allowed sixty days next after the service of said answer to take testimony in support of their several allegations and denials, notice of intention to examine witnesses to be given to the opposite party at least five days before their examination, but neither party to give notice of taking testimony within less than five days between the close of taking it at one place and its commencement at another, but in all other respects in the manner prescribed in the act of February 19, 1851.

CHARLES UPSON.  
H. L. DAWES.  
PORTUS BAXTER.  
S. S. MARSHALL.  
WM. RADFORD.

---

#### MINORITY REPORT.

Mr. Paine submitted the following minority report:

The undersigned, a minority of the Committee of Elections, dissenting from the conclusions of the majority in the case from the sixteenth district of Pennsylvania, ask leave to submit the following statement.

The right to represent the sixteenth district of the State of Pennsylvania in the thirty-ninth Congress is claimed by Alexander H. Coffroth and William H. Koontz. Neither of the claimants was admitted to the House at its organization, but the case was referred to the Committee of Elections by the following resolution:

*Resolved*, That the certificates and all other papers relating to the election in the sixteenth congressional district of Pennsylvania be referred to the Committee of Elections, when appointed, with instructions to report, at as early a day as practicable, which of the rival claimants to the vacant seat from that district has the *prima facie* right thereto, reserving to the other party the privilege of contesting the case upon the merits, without prejudice from lapse of time or want of notice.

In order to render our statement intelligible, we annex, as part of it,



an exhibit of the statutory provisions of the State of Pennsylvania applicable to the election of representatives in Congress, to which frequent reference will be made.

If the House contemplated in the resolution such a *prima facie* right as would have authorized the Clerk to place the name of one or the other of the claimants on the roll of the House at its organization, we are of the opinion that neither claimant had such a *prima facie* right. The proclamation of the governor (paper 1) would manifestly be the best if not the only evidence of such a right, under the federal and State laws applicable to the case. (42\* and U. S. Stat. at Large, vol. xii, p. 804.) But that proclamation, while it does show that certain representatives from that State were elected according to the laws of the State, does not show that either of the claimants was so elected. On the contrary, it expressly shows that no such returns had been received as would authorize the governor to proclaim the election of any representative in the sixteenth district.

Probably the return of the board of district judges, transmitted in accordance with the statute of Pennsylvania, (39\* and 43\*,) by the governor, to the House of Representatives, would also establish such a *prima facie* right, if unimpeached, provided it were accompanied by proper proof that the election was held in accordance with federal or State laws.

It is possible that the certificate of election which the district board is required (41\*) to transmit to each person elected to serve in Congress, if satisfactorily authenticated and unimpeached, would also establish such a technical right, provided it were, at the same time, properly shown that the election was held in accordance with State or federal laws.

But neither by a return of the district board to the secretary of the Commonwealth, nor by a certificate of that board to either of the claimants, has such a *prima facie* right been shown, in this case, before the committee. Each claimant presents a paper purporting to contain the return of the district board, showing his election. Paper 4 is Mr. Coffroth's return; paper 2 is Mr. Koontz's return. Each claimant also presents a paper purporting to be a certificate by the district board of his election. Paper 16 is Mr. Coffroth's certificate; paper 15 is Mr. Koontz's certificate. To Mr. Coffroth's return (paper 4) there are five objections:

1. It is evident that it does not, in itself, satisfy the law of the United States, which permits the clerk to place on the roll, at the organization of the House, "the names of such persons only whose credentials show that they were regularly elected, in accordance with the laws of their States, respectively, or the laws of the United States." Nor is there, in our judgment, any supplementary proof before the committee which, if coupled with the paper, would have authorized the clerk to place his name on the roll of the House in compliance with this law. The legitimate evidence upon the question whether Mr. Coffroth was regularly elected in accordance with the laws of the State of Pennsylvania or of the United States will be particularly considered in our examination of another branch of the case.

2. This return lacks the authentication which would be essential to it as the basis of such a *prima facie* right. It neither bears upon its face such authentication, nor is it so authenticated by any other lawful evidence before the committee. It bears neither the great seal of the State, nor any other official seal recognized by the act of Congress relating to the authentication of public acts and records. It is not



authenticated, as a lawful return, by an accompanying official certificate or act of the governor, or of any other officer; but, on the contrary, is repudiated by the governor in his official proclamation. It has not the sanction of an official transmittal by the governor to the House of Representatives, as evidence of an election under the law of the State, (43\*.) The official character of those who sign it is not admitted by Mr. Koontz. On the contrary, he denies it, and maintains the legality of the rival district board, from which emanates his own return, upon grounds which we shall soon have occasion to examine. Indeed, if this *were* admitted, it would evidently be a dangerous precedent for the clerk to give one claimant the power to authenticate, by his own mere *admission*, the original credentials of another, and so place his name on the roll at the organization of the House.

3. This return is contradicted and neutralized as a basis for such a *prima facie* case as we are now considering, by the official proclamation (paper 1) of the governor of Pennsylvania, which was transmitted to the Clerk of the House, and constituted the credentials of the members now representing that State. The following is an extract from that proclamation: "No such returns of the election in the sixteenth congressional district have been sent to the secretary of the Commonwealth as would, under the act of assembly of 2d July, 1839, authorize me to proclaim the name of any person as having been returned as duly elected a member of the House of Representatives of the United States for that district." And it is shown by the official statement of facts made by the attorney general of the State of Pennsylvania, (paper 32,) and used as one of the proofs before the committee, that the return of Mr. Coffroth (paper 4) was before the governor when he issued the proclamation.

4. The return in favor of Mr. Coffroth (paper 4) stands confronted by a return in favor of Mr. Koontz. (Paper 2.) Leaving out of view all extrinsic proofs, and looking only at the faces of the two returns, we find the return in favor of Mr. Koontz to be better than that in favor of Mr. Coffroth. Indeed, if the return of a district board could, standing alone, secure a *prima facie* right to a seat, it is certain that the return in favor of Mr. Koontz would, if it stood alone, give him such right. It is also equally certain that the return of Mr. Coffroth, standing alone, could not give him that right. If the return in favor of Mr. Coffroth (paper 4) purports to be the return of the election in the sixteenth district of Pennsylvania, so does the return in favor of Mr. Koontz. (Paper 2.) If the former purports, in the body of the instrument, to be the return of a majority of the district judges of that district, representing four of the five counties, so does the latter purport to be the return of all the district judges of that district, representing all of the five counties. If the former purports to show the signatures and seals of four judges, representing four of the counties, so does the latter also purport to show the signatures and seals of five judges, representing all the counties of the district. If the former was presented to the governor, and insisted upon as the basis of his proclamation in favor of Mr. Coffroth, so also was the latter presented to him, and insisted on as the basis of his proclamation in favor of Mr. Koontz. If the latter is neutralized by the governor's proclamation, so also is the former. In none of these particulars is Mr. Koontz's return inferior to Mr. Coffroth's. In some of them it is superior. But in one other point of comparison the return which confronts Mr. Coffroth is immensely superior to his own. It purports to be a return of *all the votes* cast for members of Congress in all of the five counties of the district



in strict compliance with the law, while Mr. Coffroth's return purports to be a return of the votes of only four of the five counties. And this brings us to our main objection to the return.

5. It is, in our judgment, a fatal defect in the return presented in favor of Mr. Coffroth that it does not purport to be a full return of all the votes given in the district for representative in Congress. The law provides that "the judges of the several counties, having met as aforesaid, shall cast up the several county returns, and make duplicate returns of *all the votes* given for such office in said district, and of the name of the person or persons elected." But the return shows that the votes of four counties only were cast up; that the vote of the county of Somerset was not counted; that "Alexander H. Coffroth, having a majority of all the votes cast, *as counted before the board*, is declared duly and legally elected;" and that "the county of Somerset was not represented by a judge or otherwise at the meeting."

We concur in the opinion of the attorney general, (paper 32,) that, for this last reason, the return of Mr. Coffroth was so essentially defective as to be no return at all, and was no proper basis for the governor's proclamation. For the same reason, as well as for the others already given, we are of the opinion that it constituted no lawful basis of a claim for a place on the roll at the organization of the House. We shall soon have occasion to inquire whether it is valid to any extent or for any purpose.

We now come to the examination of the return of the board of district judges presented in favor of Mr. Koontz. Its defects have already been incidentally considered. It is true that it purports, on its face, to be a full return of the votes of all the five counties of the sixteenth district, and to have been signed and sealed by five judges, constituting a full board, and was presented to the governor as a basis for a proclamation in favor of Mr. Koontz. But neither alone nor coupled with any legal supplementary proof before the committee would it satisfy the act of Congress relating to the credentials of members. Moreover, its authentication is as defective as that of Mr. Coffroth's return; it is confronted by the return of a rival claimant, and is contradicted and neutralized by the proclamation of the governor, whose official duty it was to proclaim which of the returns, if either, was valid. In our judgment, then, Mr. Koontz has made, by this return, no such *prima facie* case as would have authorized the Clerk to place his name on the roll at the organization of the House.

The two certificates of election (papers 15 and 16) purporting to have been addressed, each by a district board, to the claimants, respectively, are probably both regular in form, (41\*,) but neither can support a *prima facie* claim to the contested seat for the following reasons: Neither complies with the statute relating to credentials, whether taken by itself or coupled with other proofs before the committee. Neither is authenticated, each is contradicted by the other, and both are destroyed by the proclamation of the governor. (Paper 1.) Moreover, the certificate (paper 16) in favor of Mr. Coffroth is contradicted by the return (paper 4) given in his favor by the same district board; for the certificate contains a recital that the board had "counted the votes cast in said district," whereas the return explicitly shows that they did not count the votes of Somerset County. But it is doubtful whether these certificates, which are not required by law (41\*) to contain any statement of the votes cast, and were manifestly intended by the legislature as mere notifications to the members elect, should, in any case, be elevated to the dignity of credentials at the organization of the House.



We are of the opinion, therefore, that neither of the claimants has established such a *prima facie* right as would have authorized the Clerk to place his name on the roll of the House at its organization. This would dispose of the case if it was the intention of the House to instruct the committee to report which claimant had such a strict *prima facie* right; but we do not so understand the resolution. We understand the House to have required the committee to report which claimant, if either, was, by the certificates and papers referred, without additional confirmatory or contradictory proofs, shown to be entitled to the disputed seat.

The state of facts established by the proofs will be more intelligible if preceded by a brief abstract of the subjoined statutory provisions of the State of Pennsylvania, exhibiting the various stages of the process by which the expression of the will of the qualified electors of a congressional district of that State is transmitted from the ballot-boxes to this House. This is accomplished by four successive official acts:

1. The election boards, by whom the home and military polls are actually conducted, (1\*, 2\*, 15\*,) send returns of the elections, held by them, to the boards of county return judges, (5\*, 6\*, 26\*, 27\*, 28\*.)

2. The several county boards of return judges send aggregate returns of the home and military vote, for their respective counties, to the district board of judges, (37\*, 38\*.)

3. The district board sends an aggregate return of the vote for the district to the secretary of the Commonwealth, (39\*, 40\*.)

4. The governor issues his proclamation, or transmits the district board return to this House, (42\*, 43\*.)

The return of each of the precinct boards, by whom the home polls are conducted, is sent to the county board by a judge, who presents them in person, (5\*, 6\*, 8\*.) The return of the board by whom a military election is conducted is not sent to the county by a judge in person, for the exigencies of the military service would not permit that, but is sent to the county board by mail, or express, (or by a commissioner appointed by the governor,) through the office of the prothonotary of the county, (28\*.) The reasons for the provision by which the military returns, instead of being sent directly from the army to the county board, are sent to the prothonotary's office and by him certified to the county board, are very obvious.

The county boards are required to count all the returns, (as well those from the military polls as those from the home precincts,) excepting only those which are so defective as to be unintelligible, (10\*, 34\*, 36\*.) The home returns are cast up on the first Friday and the military returns on the third Friday after the election. (6\*, 8\*, 9\*, 10\*, 33\*.) Each of these county board returns is required to contain a fair statement of all the votes given for the county for every candidate for Congress, to be signed (not sealed) by all the judges present, and attested by the clerks, to be taken in charge by one of the judges and by him produced at the meeting of the district board; and, as we have already seen, the district board is required to cast up the several county returns and send its return of the result to the secretary of the Commonwealth.

A failure by a county board to count an intelligible home precinct return is as fatal to the validity of the return of such county board, as a failure by a district board to count one of the county returns is fatal to the validity of the return of such district board; and a failure by a county board to count an intelligible military election return is precisely as fatal to the validity of the return of such county board as is a failure to count one of the home precinct returns, (10\*, 34\*, 36\*.)

In each of the five counties of the district all of the home and military



precinct returns were duly forwarded—the former by the hands of precinct judges, the latter by mail—to the office of the prothonotary. But in one case, that of Company B, Twenty-first regiment volunteer cavalry, the *original* return was before the Adams County board, and not the certified copy provided for by the law, (30\* and paper 12.) The law, however, while it does require the prothonotary to deliver certified copies of the returns of military votes to the county board, does not restrict the board to the use of such copies to the exclusion of the originals, (34\*.) Eight such returns were rejected by the Adams board, and two by the Bedford board. (Papers 12, 18.)

All of these home and military precinct returns (with a single possible exception, which was disregarded by the parties) were duly counted by the proper county boards in three of the five counties, viz: Franklin, Fulton and Somerset; but in Adams and Bedford a majority of each county board refused to count certain military returns. In Bedford County the prothonotary refused to certify to the county board two of the military returns, and set forth his reasons for such refusal, in the instrument by which he certified the other copies. The minority in each case opposed the action of the majority. In Adams the majority of the judges signed a paper purporting to be a return of the home and military vote, but in fact not embracing the rejected military returns of that county. (Paper 11.) At the same time and place they signed, as return judges, a paper setting forth their reasons for not counting the several rejected returns. (Paper 12.) On the other hand, the minority of the same board signed a paper purporting to be a return of the home and military vote, and in fact including the military returns which were rejected by the majority. (Paper 13.) And, at the same time and place, they signed a paper containing a protest against the action of the majority and setting forth their reasons for not concurring therein. (Paper 14.)

In Bedford County all the judges of the county board on the first Friday after the election signed a paper purporting to be a return of the home vote. (Paper 8.) But after the computation of the military vote, the majority signed a paper purporting to be a return of the military vote for that county, but, in fact, excluding the two rejected returns. (Paper 9.) The minority, on the other hand, refused to sign that paper, but did sign a paper purporting to be a return of the military vote for the county, and, in fact, including the two rejected returns. (Paper 10.)

The returns of the majorities of the Adams and Bedford County boards were produced by judges belonging to and designated by the majorities of such boards, at the meeting of that district board from which emanated the return in favor of Mr. Coffroth. (Paper 4.) The returns of the minorities of these two county boards were borne by judges belonging to and designated by the minorities to that district board from which emanated the return in favor of Mr. Koontz. (Paper 2.)

If it was the intention of the legislature of Pennsylvania to augment the difficulties which must always attend the exercise of the elective franchise by soldiers in the field, by hampering them with more stringent and minute formalities than encumber the elective franchise within the State, the intention was certainly not well expressed in the military election act of 1864, which contains the following sweeping clause, not found in any other general law of that State: "No mere informality in the manner of carrying out or executing any of the provisions of this act shall invalidate any election held under the same, or authorize the return thereof to be rejected or set aside." (Sec. 26, law 1864—32\*.)

By the law applicable to the home elections, a clear distinction is made



between the return of the precinct judges, strictly so called, and the poll-book, tally-list, and certificates of oaths. One duplicate of the poll-book, tally-list, and certificates of oaths is sealed up in one or more of the ballot-boxes, and deposited with the nearest justice, "to answer the call of any person or tribunal authorized to try the merits of such election." (Purdon's Dig., p. 287, sec. 55.) The other duplicate is sent under seal to the office of the prothonotary of the county. But an entirely different disposition is made of the return. That, and that only, goes to the county board. To that only do the judges of the county board look to ascertain the vote at the precinct. The errors, defects, and informalities of the poll-books, tally-lists, and certificates of oaths, are immaterial. If the returns are not so defective as to be unintelligible, the judges may count them, and leave to other tribunals the rectification of whatever wrongs may ensue. The county board *must* meet on the first Friday after the election, (6\*,) and *may* meet on the morning of that day. But the law does not compel the deposit of the poll-books, tally-lists, and certificates, before the evening of that day, (4\*.) Hence, during the whole of the day on which the board meets they may be inaccessible, even though the judges should desire to inspect them.

In the military elections the same distinction exists between the return and the poll-book, tally-list, and certificate. The military return is, in substance, the same as the home return, (6\*, 26\*.) It is true that the military return is sent to the office of the prothonotary, where also the tickets, poll-book, tally-list, and certificates of oaths are sent, all being written in the same book or series of papers. But the reason of this is to be found in the obvious propriety of sending the return to some known public office to await the call of the county board. And no office can be more appropriate than that of the prothonotary. This circumstance, therefore, does not affect the legal character of the return. The law requires the prothonotary to certify to the board copies of these returns, not of the poll-books or other pages. (30\*.) If the originals are used, it is only at the original returns that the judges are required to look.

But all of the ten rejected returns of Adams and Bedford Counties, (using the word in its restricted and proper sense,) except those of Company B, Twenty-first regiment, Adams County, and Company H, Two hundred and eighth regiment, Bedford County, are free from such defects as would render them unintelligible or incapable of computation; those of Companies B and G, One hundred and thirty-eighth regiment, and Company I, Two hundred and tenth regiment, are absolutely perfect; and those of the three hospitals and of Barracks No. 1 closely approximate to perfection.

Now, the home electors have no such sweeping provision in aid of informalities as has been enacted for the soldiers. If, then, the county board cannot inquire into the regularity of the poll-books, tally-lists, or certificates of oaths of home electors, who come with returns which are not so defective as to be unintelligible or incapable of computation, why should they inquire into the regularity of these papers when soldiers come with intelligible returns?

If, notwithstanding the evident intention of the legislature to lighten the burden of formalities, always so oppressive to electors in the field, and to intrust to courts and other tribunals the remedy of inevitable evils, we are to scrutinize the soldier's poll-books, tally-lists, and certificates of oaths, as well as his returns, while the home elector is merely required to bring intelligible returns, still the soldier will bear even this



scrutiny in the present case. For such a scrutiny shows the illegality of the rejection of eight of these returns.

1. The return of Company K, One hundred and eighty-fourth regiment, was rejected "because it embraced one voter from Franklin County." (Papers 30 and 12.)

For want of proper proof that this vote was not counted also in Franklin County, which is within this congressional district, Mr. Koontz, who insists on this return, should lose one vote, and the residue should be counted: for Mr. Coffroth, twenty-one; and for Mr. Koontz, thirty-eight.

2. The return of Company C, Two hundred and second regiment, was rejected for the alleged reason that the election was held and the return made by only one judge. (Papers 12, 22.)

All three of the judges signed this return, which is not only intelligible, but almost perfect in form. And yet the accompanying poll-book and certificates do not show that more than one judge was sworn. We have therefore concluded, not without grave doubts, to reject this return, which would, if received, give Mr. Coffroth fifteen and Mr. Koontz twenty-seven votes.

3. The three returns for the Mower, Cuyler, and McClellan hospitals (papers 12, 23, 24, 25) were rejected because the certificates of the oaths of the election officers were wanting. This was no lawful ground for their rejection, for it appears from the whole papers that the judges and clerks were actually sworn, and the returns, though defective in form, are perfectly intelligible, and clearly within the provisions of the statute applicable to mere informalities. They give Mr. Koontz five votes, Mr. Coffroth none.

4. The return of Companies B and G, One hundred and thirty-eighth regiment, (papers 12, 26,) was rejected because two companies voted at one poll, before one set of election officers.

It does not, however, appear from the return, or from any other proof before the committee, that two companies voted at one poll or before one set of election officers. It does appear that electors of two companies so voted. But under the act of 1864 (13\* and 14\*) electors of two hundred companies may so vote. In order to invalidate this return, it must be shown that these thirty-three voters constituted two organized companies, and not detachments absent from their companies. This does not appear. On the contrary, the language of the return and of the poll-book is precisely such as would be proper if they voted as detachments. (20\*, 24\*, 25\*, 26\*, 27\*.) There could be no excuse for such rigor toward electors in the military service as would be involved in the rejection of this return, even if the liberal statutory provisions respecting defects and informalities were entirely wanting. This return gives Mr. Coffroth one and Mr. Koontz thirty-two votes.

5. The return of Company I, Two hundred and tenth regiment, (papers 12, 27,) was rejected because the certificates of the oaths of the election officers were wanting.

The poll-book recites that these officers were sworn. Their oath is annexed to the poll-book, duly signed by all the officers. The clerk's certificate is there. The return is substantially correct and duly signed. These papers clearly show that the election officers were duly sworn, and, in our judgment, are undoubtedly on the safe side of the line which separates essential defects from mere informalities.

6. The return of Company B, Twenty-first regiment cavalry, (paper—,) was rejected for three alleged reasons:

(1.) No copy of the return was certified by the prothonotary to the return judges.



It has already been shown that the judges might use the original which they had as well as a copy. And if there could possibly be any doubt as to their right to do that, there can be no doubt as to our right to use the certified copy which is before us.

(2.) It is alleged that the election of officers appears to have been affirmed by Captain James Mickley, who was not an officer of the election.

This, however, does not appear from the return, or from any of the papers connected with it, or from any other proofs before the committee.

(3.) The number of votes cast for representative is alleged to have been greater than the number of Adams County electors present.

The poll-book does show that two votes were cast by electors of Franklin County, which is in the same congressional district. There being no proof that these two votes were not also counted in Franklin, they should be deducted from the vote of Mr. Koontz, and the rest counted—for Mr. Cofforth four, and for Mr. Koontz thirty-four.

From the copy of military returns (paper 18) certified to the Bedford County board by the prothonotary, it appears that the returns rejected by the majority were those of Company H, Two hundred and eighth regiment, (paper 19,) and Barracks No. 1, Washington, (paper 20,) that the board had actual notice of the presence of the originals in the prothonotary's office, and of his reasons for refusing to certify them.

The return of Company H, Two hundred and eighth regiment, (paper 19,) was rejected for the alleged reason that the poll-book gives the names of only thirty-six Bedford County electors, while fifty-two votes are returned for members of Congress. This is true. But sixteen votes are shown, by the poll-book, to have been cast by electors of Franklin and Fulton Counties of the same congressional district. They were sent to *one* county, instead of being distributed. Inasmuch as it has not been shown before the committee that these sixteen votes were not also counted in the proper counties, they should be deducted from the vote of Mr. Koontz, who insists upon the return, and the rest counted—for Mr. Coffroth eighteen, and for Mr. Koontz eighteen.

The return of Barracks No. 1 was rejected for the alleged reason that the poll-book contains the names of only forty-eight electors, and yet eighty-seven votes were cast for representative in Congress. Passing from the *return*, which exhibits no such discrepancy, and is very far from being so defective as to be unintelligible, to the *poll-books*, which present the apparent contradiction, we find in the proofs before us a satisfactory explanation. By the law (20\*) the election officers are required to keep, at each of the polls, as many poll-books as there are counties represented by electors. At the polls for Barracks No. 1 there were two for the sixteenth congressional district, which were produced before the committee. (Papers 20, 21, 31.) There may have been others. Of these two, one was the return in question, and the other was for Fulton County. (Paper 31.) The latter return, coupled with paper 29, shows that thirty-seven Fulton votes were cast at that election, and yet none were counted in that county for representative in Congress. It appears that the votes were in this case, as in the last, sent through the mistake of the officers to *one* county, instead of being distributed. This will not, in our judgment, warrant us in rejecting any of these votes except the two which are unexplained, and should be deducted from the vote of Mr. Koontz. Mr. Coffroth is entitled to twenty-nine, and Mr. Koontz to fifty-six.

The majority and minority returns from the Adams County board, produced in the respective district boards, were, therefore, both invalid.



That of the majority was invalid for the same reason for which the return of the Coffroth district board was invalid. It did not embrace all the valid military precinct returns. It was claimed that it was also invalid because it was not signed by all the precinct judges present at the meeting of the board; that while it might not have been invalidated by the mere *absence* of a minority, yet the non-concurrence, and *a fortiori* the actual opposition of the minority *being present*, did destroy its validity. The considerations in favor of this position are not without weight. The phraseology of the law is peculiar and peremptory. "The clerks shall thereupon, in the presence of the judges, make out returns in the manner hereinafter directed, which shall be signed by *all the judges present*, and attested by said clerks," (9\*.) And if it would be a hardship to suffer a minority, by its opposition, to destroy a return, and so temporarily deprive a duly elected member of his seat, it would certainly be no less a hardship to suffer a majority, by a false return, to give the seat, despite the protest of the minority, to a claimant who was not in fact elected. Indeed, the injury in the former case would not be so great as in the latter. In the former case the rightful claimant would be subjected to a temporary delay in assuming his office, and the country to a temporary loss of his services; whereas, in the latter, an intruder, with no rights, would be thrust by individuals into the national legislature at its organization, to remain until evicted after a contest. The right of a district to be always represented is nowise vindicated, but rather assailed, by the admission of an interloper to its place on this floor. The hazard of empowering a dishonest minority of county return judges to temporarily deprive a rightful claimant of his seat, and the country of his services, is as nothing compared with the hazard of empowering a dishonest majority to send hither men not chosen by the people to legislate for the country until driven from the House. It is true that this power must always reside somewhere, in governors or other officers, authorized to furnish credentials to representatives in Congress. But only urgent reasons would warrant the extension of this power from responsible public officers to private individuals. The attorney general of Pennsylvania, in his opinion, (paper 32,) which was accepted by the claimants as a correct statement of facts only, seems to have considered the provision of section 60 of the general election law of 1839, requiring the return to be signed by all the judges present, inapplicable when the district is composed of two or more counties, for which case additional provisions are made in section 63. But we are of a different opinion, and, if it were necessary to decide this question, should find great difficulty in upholding the return of the majority against the objection that the minority opposed it.

The return of the minority of the Adams County board, although it did embrace all the precinct returns, was invalid because it was the return of a minority, if not for the reason that it was not signed by all the judges present.

For the same reasons the returns of the soldiers' vote, by the majority and minority of the Bedford County board, were both invalid.

Neither these returns, nor the judges who bore them, had any place in either of the district boards.

In Franklin County, although the return of the county board was signed by all the judges, there was a difficulty in the selection of a judge to produce the return at the district board. The law provides that one of the county judges shall take charge of the return, and produce it at the meeting of the district board, (38\*.) The mode of his selection is not indicated. Any one of the county judges who produces a regular valid return has, *prima facie*, a right to a seat in the district board *with-*



out credentials showing his appointment. Nevertheless, the judges of the county board undoubtedly have the right, by a majority vote, to select their representative in the district board, and to reconsider their choice and make another at any time before the meeting of the board. Mr. Laker, who was chosen by a majority at the second meeting of the Franklin County board, and attended the Coffroth district board, was the lawful district judge for that county; and Mr. Wilhelm, who was unanimously chosen at the first meeting of the county board, and attended the Koontz district board, was not. And yet he was actually a member of the county board, and if he had produced the return, at a meeting of the district board, would have been, *prima facie*, entitled to act as district judge, (38\*.)

Mr. Wills was the lawful district judge for Somerset County, and attended the Koontz board only.

Mr. Winter was the regularly chosen district judge for Fulton County, and on the proper day attended first the Koontz board, and afterward the Coffroth board. If the first board had contained a majority of the lawful judges, including himself, his functions would have ended there, and his attendance at the second would have been unlawful. But there was only one other lawful judge present at the Koontz board, viz, Mr. Wills, of Somerset. And when Mr. Winter reached the Coffroth board, he found only one other lawful member there, viz, Mr. Laker, of Franklin, who had been elected by a mere majority in place of Mr. Wilhelm, whose election was lawful and unanimous.

In our judgment, then, the certificate and other papers, which were referred to the committee, and were competent as evidence, show the following to have been the whole number of votes legally returned for the respective claimants:

## UNDISPUTED.

	Coffroth.	Koontz.
Franklin County, total . . . . .	3, 457	3, 508
Fulton County, total . . . . .	807	535
Somerset County, total . . . . .	1, 592	2, 512
Adams County, part . . . . .	2, 707	2, 366
Bedford County, home . . . . .	2, 410	1, 740
Bedford County, part soldiers . . . . .	94	318

## DISPUTED.

Adams County—Company K, 184th regiment . . . . .	21	38
Mower Hospital . . . . .	..	1
Cuyler Hospital . . . . .	..	1
McClellan Hospital . . . . .	..	3
Companies B and G, 138th regiment . . . . .	1	32
Company I, 210th regiment . . . . .	9	19
Company B, 21st cavalry . . . . .	4	34
Bedford County—Company H, 208th regiment . . . . .	18	18
Barracks No. 1 . . . . .	29	56
	<hr/>	<hr/>
	11, 149	11, 181

Majority for Mr. Koontz . . . . . 32

If the majorities of the county boards of Adams and Bedford had counted, as they should have done, all the returns which, irrespective of the accompanying poll-books, tally-lists, and certificates of oaths, were



free from defects sufficient to render them unintelligible or incapable of computation, the following would have been the result in the district canvass :

## UNDISPUTED.

	Coffroth.	Koontz.
Franklin County, total .....	3, 457	3, 508
Fulton County, total.....	807	535
Somerset County, total.....	1, 592	2, 512
Adams County, part.....	2, 707	2, 366
Bedford County, home.....	2, 410	1, 740
Bedford County, soldiers' part.....	94	318

## DISPUTED.

Adams County—Company K, 184th regiment.....	21	38
Company C, 202d regiment.....	15	27
Mower Hospital.....	..	1
Cuyler Hospital.....	..	1
McClellan Hospital.....	..	3
Companies B and G, 138th regiment.....	1	32
Company I, 210th regiment.....	9	19
Bedford County—Barracks No. 1.....	29	56
	<hr/> 11, 142	<hr/> 11, 156

Majority for Mr. Koontz ..... 14

It remains to consider two positions which were taken on the argument before the committee:

I. It was urged that inasmuch as the vote of Somerset would not affect the result, the return of the Coffroth district board ought to be held conclusive by this committee as to the four other counties for which it purported to be a return; that otherwise Mr. Koontz would be permitted to profit by the wrong of his own partisan.

But we are unable to adopt this view, for the following reasons:

1. The governor, if he had not gone behind the returns of the rival district boards to ascertain by testimony who were the real district judges, (paper 32,) would have been compelled either to do nothing or to proclaim Mr. Koontz elected. On its face his return was perfect. Every judge who signed it had been a county return judge, and if he appeared in a district board with a county return, had a *prima facie* right to be there, which could only be defeated by showing that some other judge had in fact been selected by the county board to represent it in the district board. The Coffroth return was, on its face, worthless as a return upon which to base the governor's proclamation. The law requires the governor "to declare by proclamation the names of the persons so returned as elected." It by no means permits him to base his proclamation in part on the return and in part on evidence obtained *aliunde*. For the same reasons we must, if we do not go behind the return to inquire who were the lawful district judges, give the seat to Mr. Koontz, on his return alone.

2. The Coffroth return having, therefore, no *legal* character either before the governor or the committee, whatever regard we may give it will be a mere gratuity. It would certainly be a novelty if such an instrument should be conclusive. To withhold from it such conclusive character can be no real hardship to Mr. Coffroth, if he was not in fact elected. It cannot be a hardship to a claimant, who has neither a technical nor a substantial claim, to decline arbitrarily to provide him with



a technical one, and hold it conclusive. On the contrary, to do so would be to wrong his competitor, if that competitor's claim, although not technically perfect, rested on a basis of real merit. If Mr. Coffroth had in fact a majority of the lawfully returned votes, it might well be called a hardship to suffer a partisan of Mr. Koontz, by a raid upon the district board, to rob him of his seat, but it cannot be said that this ought of *itself* to give the seat to Mr. Coffroth, if he did not in fact receive a majority of the votes, and had no chance of success, except through a previous raid of his own partisans on the soldiers' returns.

3. Looking behind the return of the district board, we find, as the attorney general did, that the district judges of Adams and Bedford Counties were selected by majorities of their respective county boards; and we also find, what the attorney general had no occasion to inquire into, that the returns borne by those judges were nullities, and that therefore neither the returns nor their bearers had any place in the board.

II. It was also insisted before the committee that, if we should go behind the return of the district board, we ought to stop at the county board returns as conclusive, including the majority returns of Adams and Bedford Counties. We cannot assent to this proposition. A scrutiny of the law will show that when two or more counties are embraced in one congressional district, as in the case before us, the county returns differ, in material points, both from the soldiers' elementary returns and from the district return. The law provides official depositories of the returns of the military election judges, and of the district board, viz, the offices of the secretary of the Commonwealth and of the prothonotary of the county. But for the return of a county board, when two or more counties are embraced in one district, no official depository is provided. It has but one office, viz, to transmit to the district board in an aggregate form the official declarations, made by the precinct judges, of the result of the elections by them held, and when that office is performed its mission is so completely ended, that the law provides no place where it may be afterward preserved. Both the return of the district board and the soldiers' elementary returns are preserved in public offices, and, coming from official depositories duly certified, are, of themselves, lawful evidence before us. But the return of the county board, as an official paper, has no existence after the board has met and acted, and can come before us in no legal form of proof, except by the admission of the parties, although it might also, in a regular contest, be received as part of a deposition. The Adams and Bedford returns are before the committee by admission of the parties, but that admission is mutual, and embraces the papers of both or of neither. It will be a strange proceeding if Mr. Coffroth, after getting his majority returns before the committee by such conditional assent of his competitor, shall be permitted to turn round and repudiate the conditions, and convert his papers, which are here only by sufferance, into conclusive returns. Mr. Koontz could, of course, with no greater injustice, make the same preposterous demand.

But, in addition to this, the majority return of Adams County is confronted by a paper of equal authority before us, signed by the same judges, at the same time and place, which must be taken as a part of the instrument itself. From the two papers it appears that certain votes were not counted, for reasons which the precinct returns show to have been unlawful, and the return is a nullity. It is also confronted by the minority return, which shows that the majority return was made in the face of the actual opposition of the minority, and is, therefore, of at least doubtful validity.



In Bedford County the majority return of the soldiers' vote is in like manner confronted by the minority report, by a duly-authenticated transcript of the certified copies of military precinct returns furnished by the prothonotary to the county board, showing the rejection of two returns, and the reasons therefor; and by the military returns, which show the rejection to have been unlawful.

We offer the following resolutions:

1. *Resolved*, That William H. Koontz has the *prima facie* right to a seat in this House, as a representative of the sixteenth congressional district of the State of Pennsylvania.

3. *Resolved*, That Alexander H. Coffroth, desiring to contest the right of William H. Koontz to a seat as Representative of the sixteenth congressional district, be required to serve upon the said Koontz, within fifteen days after the adoption of this resolution, a particular statement of the grounds of said contest; and that the said Koontz be required to serve upon the said Coffroth his answer thereto within fifteen days thereafter; and that both parties be allowed sixty days, next after the service of said answer, to take testimony in support of their several allegations and denials; notices of proposed examinations of witnesses to be given at least five days before such examinations; no such examination to be commenced at one place before the expiration of five days from the conclusion of the last examination at another place; such examinations to be regulated in all other respects by the provisions of the act of February 19, 1851.

HALBERT E. PAINE.  
J. W. MCCLURG.  
S. SHELLABARGER.  
G. W. SCOFIELD.

---

### BALDWIN vs. TROWBRIDGE.

Where there is a conflict of authority between the constitution and legislature of a State in regard to fixing place of elections, the power of the legislature is paramount. Mr. Trowbridge retained his seat by a vote of (February 14, 1866) 108 to 30.

February 5, 1866.—Mr. Scofield, from the Committee of Elections, made the following report:

*The Committee of Elections, to which was referred the petition of Augustus C. Baldwin, claiming a seat in the Thirty-ninth Congress as Representative from the fifth congressional district of Michigan, report as follows:*

There is no question of fact, and only one of law, involved in this contest. The constitution of the State of Michigan, article VII, section 1, reads as follows:

SEC. 1. In all elections, every white male citizen, every white male inhabitant residing in the State on the twenty-fourth day of June, one thousand eight hundred and thirty-five, every white male inhabitant residing in the State on the first day of January, one thousand eight hundred and fifty, who has declared his intention to become a citizen of the United States, pursuant to the laws thereof, six months preceding an election, or who has resided in this State two years and six months, and declared his intention as aforesaid, and every civilized male inhabitant of Indian descent, a native of the United States, and not a member of any tribe, shall be an elector and entitled to vote; but no citizen or inhabitant shall be an elector, or entitled to vote at any election, unless he shall be above the age of twenty-one years, and has resided in the State three months, and in the township or ward in which he offers to vote ten days, next preceding such election.



The first and second sections of an act of the legislature of that State passed February 5, 1864, are as follows:

SEC. 1. *The people of the State of Michigan enact*, That every white male citizen or inhabitant of this State, of the age of twenty-one years, possessing the qualifications named in article seven, section one, of the constitution of the State of Michigan, in the military service of the United States or of this State, in the Michigan regiments, companies, or batteries, shall be entitled to vote at all the elections authorized by law, as provided in this act, and every such citizen or inhabitant shall thus be entitled, in the manner herein prescribed, whether at the time of voting he shall be within the limits of this State or not.

SEC. 2. Every soldier belonging to Michigan regiments and batteries or companies, in the military service of this State or of the United States, or volunteer soldiers, residents of Michigan, belonging to regiments, batteries, or companies, present on the day of election from other States, including officers and their staffs, surgeons, assistant surgeons, chaplains, and commissioners appointed under this act, shall, if possessed of the qualifications set forth in section one of this act, be entitled to the benefits of the provisions thereof.

Under this act of the legislature, a large number of votes was cast by soldiers outside the limits of the State. If these votes can be lawfully counted, Mr. Trowbridge has a majority of the whole, and is entitled to the seat; if not, Mr. Baldwin, having a majority of the home vote, is entitled to it. It will be observed that the elector is prohibited by the constitution of the State (taking the interpretation of its supreme court as correct) from voting outside of the township or ward in which he resides, but by the act of the legislature is allowed, when absent in the military service of the country, to vote even outside the State. Here is an unmistakable conflict of authority. The constitution plainly prohibits what the legislature as plainly permits. The one authorizes the election to be held only in the township or ward; the other at military headquarters. The power to act at all in the premises, so far as concerns representatives in Congress, is derived from article one, section four, of the Constitution of the United States, which is as follows:

The times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof; but Congress may at any time by law make or alter such regulations, except as to the place of choosing senators.

Here the power is conferred upon the *legislature*. But what is meant by "the legislature?" Does it mean the legislative power of the State, which would include a convention authorized to prescribe fundamental law; or does it mean the legislature *eo nomine*, as known in the political history of the country? The committee have adopted the latter construction. At the time the Constitution of the United States was written, there existed in the thirteen States for which it was designed legislatures, created or restrained by some fundamental law, in the shape of charters or constitutions, very much as they exist in the several States now. With this fact before them, is it not probable that the framers of the Constitution, if they intended to confer this power upon State organic conventions, would have chosen some word less liable to misconception? It is also apparent, from the manner in which this word is used in other parts of the instrument, that its framers recognized a wide difference between a continuing legislature and a convention temporarily clothed with power to prescribe fundamental law. Article V provides that Congress "shall call a convention for proposing amendments \* \* \* on application of the legislatures of two-thirds of the several States." Also, that amendments shall be valid when "ratified by the legislatures of three-fourths of the several States, or by *conventions* of three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress." Article VII provides that "the ratification of the *conventions* of nine States shall be sufficient for the establishment of this



Constitution between the States so ratifying the same." The convention closed their labors with the following resolution :

*Resolved*, That the preceding constitution be laid before the United States in Congress assembled; and that it is the opinion of this convention that it should afterward be submitted to a *convention* of delegates chosen in each State by the people thereof, under the recommendation of its *legislature*.

In these extracts the words "*legislature*" and "*convention*" are both used to denote different legislative bodies, and in such contrast as to clearly indicate that the former is employed in its historic rather than in its normal sense. In article I, section 2, the words of the Constitution are "the electors in each State shall have the qualifications requisite for the most *numerous branch of the State legislature*." Did anybody ever hear of a constitutional convention, in the history of this country, composed of two houses? Article I, section 3, provides that "the Senate shall be composed of two senators from each State, chosen by the *legislature* thereof." In article II, section 1, it is said "each State shall appoint, in such manner as the *legislature* thereof may direct, a number of electors," &c. In section 8 of article I, "the consent of the *legislature* of a State" is required before the United States can purchase places for forts, &c. Again, in article IV, section 4, is said that, "on application of the *legislature*, or the executive, (when the legislature cannot be convened,) Congress shall protect each State against domestic violence." It will hardly be claimed that a constitutional convention could perform the duties thus conferred upon the legislature; much less that it could forbid the legislature *eo nomine* from discharging them after its own dissolution.

But the legislation of Michigan may be sustained as against the constitution of that State, even if the word legislature is to be taken in its most enlarged sense. Whatever power the convention of that State possessed to prescribe the places of holding elections for representatives in Congress was derived, not like its other powers, from the people, but from the Constitution of the United States, and that, too, because it was a *constructive legislature*. The power conferred is a continuing power. It is not used up when once exercised, but survives the dissolution of the convention. The words of the Constitution are as potent then as before, and if there is any legislative body in the State that can be properly called a *legislature*, they appertain to it as strongly as to any prior legislative body. They do not authorize any convention or legislature to tie the hands of its successors. The people authorize a convention to do that where they (the people) have power; but certainly the people of Michigan had no power to enlarge or restrict the language of the Constitution of the United States. This view of the case entirely harmonizes what was at first supposed to be a partially adverse precedent in the case of *Shiel vs. Thayer*, from the State of Oregon.

It was said in argument that the legislature might abuse this power; but that does not disprove its existence. It would be equally liable to that objection if lodged in any other department of government. It is not claimed, however, that in this instance the power was abused. Mr. Baldwin conceded that to allow a vote to be cast by a soldier detained in the service of his country was a very proper use of the power, provided the legislature possessed it. If, however, it should in the future be abused, Congress has entire authority to correct it.

But, again, the contestant claims that a State has the power to prescribe the qualifications of electors, and may exercise it by an organic convention, to the exclusion of the legislature. The committee are not disposed to controvert this position. That power has been conceded to



the States, and exercised by them in the manner suggested, from the beginning of the government to the present time. But it does not follow, as the contestant supposes, that the place of holding the election for a representative in Congress may be prescribed as one of the electoral qualifications. Control over the place of voting is lodged in the legislature by the unmistakable language of the Constitution, and cannot, however disguised by names or circumlocution of words, be transferred to another department of government. Now, the constitution of Michigan either fixes the place of holding the election or it does not. If it does not, there is no conflict between the law and the constitution, and the argument is at an end. If it does, then, as before shown, the convention which adopted it entirely exceeded its power, unless such convention is to be considered a *legislature by construction*; and in that event its power, as has also been shown, was just as ample as that of any subsequent legislature, and no more. The power to prescribe the *place*, whether called a qualification, limitation, or condition, is still vested in what the constitution calls "the legislature," and there it must remain. It cannot be divested by giving it another name, however apt it may be.

The committee, then, submit the following resolution, and recommend its adoption:

*Resolved*, That Rowland E. Trowbridge is entitled to a seat in this House as a representative in the thirty-ninth Congress from the fifth congressional district in Michigan.

---

#### MINORITY REPORT.

February 9, 1866.—Mr. Marshall, from the minority of the Committee of Elections, submitted the following report:

The undersigned, having carefully considered the questions of law involved in this case, has come to the conclusion that Mr. Baldwin was duly elected and is entitled to the seat which he claims.

It is admitted that of the votes cast within the State of Michigan for representative in Congress from the fifth congressional district of that State Mr. Baldwin had a majority. It is also admitted that a large number of citizens of Michigan who were out of the State and in the service of the United States on the day of said election, in pursuance of the provisions of an act of the legislature of Michigan, approved February 5, 1864, voted at the places where they happened to be on the day of election; and that if these votes can be lawfully counted, Mr. Trowbridge had a majority and was duly elected. If they cannot be lawfully counted, Mr. Baldwin was duly elected, and is entitled to the seat.

The question submitted is, therefore, purely a legal one, and involves some nice questions of constitutional law.

Article VII, section 1, of the constitution of the State of Michigan, after prescribing the qualification of electors, provides that "no citizen or inhabitant shall be an elector, or *entitled to vote at any election*, unless he shall be above the age of twenty-one years, and has resided in the State three months, and in the township or ward *in which he offers to vote* ten days next preceding such election."

The supreme court of Michigan, in a case arising out of the identical election out of which this contest has arisen, (*the case of The People ex rel. Daniel S. Twitchel vs. Amos C. Blodgett*,) have construed this provision



of their constitution to mean that the elector shall be personally present, in the township in which he resides, on the day of election, and there in person present his ballot at the place of voting; and that the act of the legislature of February 5, 1864, "IS IN DIRECT CONFLICT WITH THE CONSTITUTION, AND FOR THIS REASON VOID." This case was very thoroughly discussed and considered by the court, the judges all giving separate opinions, and it seems to me impossible to read the case without arriving at the same conclusion. This is the highest and most authoritative exposition of that provision of the State constitution that can be given. The supreme court of Michigan is the most authoritative expounder of the constitution and laws of the State, and all other tribunals, including even the Supreme Court of the United States itself, are bound to follow and abide by the construction which the State court has placed upon their own constitution.

I will not dwell upon this point in the case, as I do not understand the majority of the committee, or, indeed, any one in behalf of the claims of the sitting member, to seriously dispute the correctness of the construction placed upon their constitution by the supreme court of the State. It is admitted, I believe, that the act of the legislature of February 5, 1864, was in direct conflict with the organic law of the State.

It is contended, however, that the legislature, in determining the times, places, and manner of holding elections for representatives in Congress, are not bound to conform to the provisions of the organic law of the State. That they have a power above, and wholly independent of, their State constitution. And this power is supposed to be found in section 4, of article I, of the federal Constitution, which is as follows:

The times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof; but the Congress may, at any time, by law make or alter such regulations, except as to the places of choosing senators.

In determining the proper construction to be placed on this clause of the federal Constitution, it is important to inquire, first, What was the object of the framers of that instrument in ingrafting into it such a provision? Why was it deemed necessary and proper? It is hardly possible that there can be two opinions in regard to this.

The convention had provided for a federal Senate and House of Representatives, in which the legislative power of the proposed government was to reside. The effective organization and continuance of these bodies were necessary to the very existence of the government under the plan proposed. To have a Senate and House of Representatives it was necessary that members thereof must be elected at regular and stated periods; and it was argued with great force that a majority of the States, becoming refractory, might, by the simple act of refusing to provide the times, places, and manner of holding elections for senators and representatives, and thereby defeating the election of these officers, suspend the action, destroy the power, or even blot out of existence the federal government.

It became necessary, therefore—absolutely necessary—to secure the continued existence and effectiveness of the federal government, to reserve to Congress the power at any time by law to make or alter such regulations. The object was to secure to the federal government, for its own safety, the due election of these officers—not to confer upon the States, or any department thereof, any powers whatever, or to interfere in any way with them in their mode of electing these officers, as long as the exercise of this power was left to the States. The object manifestly was simply to leave to the States the power to determine the times,



places, and manner of holding these elections, until Congress saw proper to exercise the powers conferred upon it for that purpose.

But it is argued that this power was by express terms left not to the *States* simply, but to the *legislatures* thereof, and that this is such a limitation upon the people of the States that they have no power to restrict their legislatures in the exercise of this right conferred upon them by the federal Constitution; but I submit, with all due respect, that not only the history and object of the section under consideration, but the proper definition of the term "legislature," as therein used, show the fallacy of this construction.

The "legislature" of a State, in its fullest and broadest sense, signifies that body in which all the legislative powers of a State reside, and that body is the people themselves, who exercise the elective franchise, and upon their power of legislation there is no limitation or restriction, except such as may be found in the federal Constitution, or such as they may themselves provide by the organic law of the State. When they assemble in convention, which in large communities is from necessity done by the agency of delegates or representatives of the people, the whole legislative power of the State is then vested in such convention. It can abolish, or in whole or in part abrogate, the proceedings of "the general assembly" or "legislative council" or "general court," or whatever may be the designation of that subordinate body in which is usually lodged a portion or residuum of the legislative power of a State. Indeed, the people of a State might provide for the periodical assembling of their convention, which would exercise and perform all legislative powers and duties without the intervention of that body of limited and restricted powers, popularly called a legislature, but which in the constitutions of most of the States is called by some other name. It is variously designated a "general assembly," a "legislative council," a "general court," and the like, and is nowhere understood to hold in its grasp all the legislative powers of a State.

In Missouri, during the late rebellion, the State convention continued its existence for years, performing all the ordinary acts of legislation, and its power to do so is not questioned. That that was a "legislature" within the sense of the term as it is used in this clause of the federal Constitution will hardly be controverted; and indeed every State convention called by the people to determine the form of government, or the powers and duties of the various officers thereby created, is a legislature, and performs many of the ordinary acts of legislation. Indeed, it is *the legislature par excellence* of the State, and that other body usually created by it, whether called a "general assembly," "general court," or otherwise, is the creature of this paramount legislature, and is liable to be modified or annihilated whenever this "legislature"—the convention of a State—shall again assemble. This secondary or subordinate body is the creature of the organic law of the State, owes its existence to it, and can rightly do nothing in contravention of its provisions.

If, then, this section of the federal Constitution can be construed to refer to this secondary or subordinate legislative body of a State, it must be held to mean that the time, place, and manner for holding elections for representatives shall be prescribed in each State by the legislature thereof, such legislature acting in subordination and in conformity to that organic law to which it owes its own existence. If the State constitution has fixed no limitation, the power of the legislature is ample and complete. But if the constitution has fixed limits, this legislature cannot transcend them, but must act within the limits prescribed, and if it goes beyond them its action is to that extent absolutely void.



Indeed, from the adoption of the federal Constitution until this time, it was never before contended, as far as I am informed, that the clause in question conferred upon that body in a State in which was reposed that residuum of legislative power, not exercised by the State convention, power to act utterly independent of, and in utter disregard of, the State constitution, by virtue of which alone it has any existence. The people have everywhere supposed that they had the power to fix a limitation upon the action of their legislature, in determining the times, places, and manner of holding elections for all offices. They have exercised this power in most of the States by fixing limitations in their State constitutions, and in every instance, I believe, where a conflict has been found to exist in this respect between the State constitution and an act of their legislature, the constitution has, by courts and legislative bodies, been sustained, and the acts of the legislature, to that extent, held to be null and void. And this House is now, for the first time, called upon to decide that in this respect a State legislature may override and utterly disregard the provisions of the very constitution that brings it into being. I admit that if there was an irreconcilable antagonism between the federal and State constitutions, in such case, there would be ground for the position taken by the majority of the committee. But no such antagonism exists. I therefore call upon the House to pause long before they establish a precedent that will operate as an invitation to the State legislatures to disregard those wholesome limitations which the people have attempted to place around the actions of their own servants.

This long and undisturbed construction of their power to fix these limitations upon the action of their servants, placed upon the Constitution by the people themselves, and by all departments of the government, ought not at this late day to be disturbed, unless it is rendered absolutely necessary by the very terms of the Constitution itself.

This House has a record of its own, and has ever attempted to adhere to the construction placed by itself in former adjudicated cases upon the Constitution and laws. This not a new question, as far as this House even is concerned. It is, indeed, *res adjudicata*. And we should not, without very strong reasons, indeed, depart from the precedents established by ourselves. These precedents are all in favor of the construction which I have here placed upon this clause of the Constitution.

The case of *Shiel vs. Thayer*, in the thirty-seventh Congress, reported in Bartlett's Contested Election Cases, page 349, is directly in point. The syllabus of the case says:

The constitution of Oregon has *fixed beyond the control of its legislature* the time for holding an election for representative in Congress.

The report in that case was made by the then and now able chairman of the Committee of Elections, Mr. Dawes, and the right of Mr. Shiel to the seat was placed distinctly on the ground that the people of Oregon had the right, in their constitution, to fix the time for the election of a member of Congress.

"The committee," says the report, "are of opinion that the election held for representative in Congress on the first Monday in June, 1860, was held in pursuance of, and in conformity with, the constitution and laws of Oregon, and that consequently the contestant is entitled to the seat." And again: "Notwithstanding this constitutional provision that general elections shall be held on the first Monday of June biennially, the legislature of Oregon seems to have believed that it had power to fix another time for the election of representative in Congress. \* \* \* The committee have not deemed it necessary to determine what those reasons are for. With all due respect to the opinions of the gentlemen



composing that legislature, they are of opinion that this House must, nevertheless, be the final judge of the meaning of this clause of the constitution of Oregon. And, for the reason stated, the committee have no doubt that the CONSTITUTION of the State has *fixed* BEYOND THE CONTROL OF THE LEGISLATURE the time for holding an election for representative in Congress, at the general election to be held biennially, and that at such election, so held IN PURSUANCE OF THE CONSTITUTION, the contestant was duly elected." And again, in the debate in the House on this case, Mr. Dawes said: "It occurs to me, sir, that that provision of the Constitution of the United States which says that the time and place shall be specified by the legislature of each State, *meant simply that they should be fixed by the constituted authority of the State until Congress itself should fix a time for the election in all the States.*"

In the case of *Farlee vs. Runk*, in the twenty-ninth Congress, it was held that where there was a conflict between the State constitution and an act of the legislature in regard to the *place* of voting for representative in Congress the provision of the constitution was binding, and the act of the legislature, so far as it conflicted with it, was void. (See Bartlett's Contested Election Cases, p. 87.) And, without troubling this House with a further citation of authorities, I respectfully submit that the ruling of the House on this point has been uniform in every case in which the question arose.

But admitting that the legislature was acting, and had the right to act, by virtue of this section 4, article 1 of the federal Constitution, without regard to the State constitution, I still submit that all votes cast out of and beyond the State of Michigan were cast without any due legal authority, and cannot properly be counted in determining the result of elections in that State, for the reason—

First. It seems to me plain that neither Congress nor the State legislature can, under that clause of the Constitution, fix or prescribe any places of voting for any office outside of the district, and especially outside of the State, within and for which the officer is elected. In the construction of all powers granted, we must have reference to the object for which the power is given. At and before the adoption of the Constitution, and ever since until within the last five years, all voters, everywhere in the United States, were required to vote within the district and State for which the officer is elected. At the time of the adoption of this clause, it is not easy to suppose that any one member of the convention for one moment thought that they were granting to Congress the power to permit citizens to vote outside a district or State for which the officers were to be elected. If the legislature possesses this power, undoubtedly Congress possesses the same power. And if Congress possesses power to *prescribe* places of voting outside of a district or State for a portion of its citizens, why not the power to *prescribe* places of voting outside of the State for *all* the citizens thereof? Why not *prescribe* that all the citizens of Michigan shall vote in Chicago for their members of Congress, and all the voters of Illinois go to St. Louis to vote for theirs? It may be said that this would be a gross abuse of power. But I deny the existence of any such power. And yet, if the power contended for by the committee exists, the other follows as a necessary consequence.

But the act of the Michigan legislature (by virtue of which the votes were cast outside of the State that it is proposed to count for the sitting member) does not *prescribe* the *place* or *places* of voting, and conse-



quently the votes were not cast in pursuance of any competent authority. The provision of said statute is as follows:

SEC. 7. At the elections herein provided for a poll shall be opened at every place, whether within or without the State, where a regiment, battalion, battery, or company of Michigan soldiers may be found or stationed, and at such election all persons may vote who are thereto entitled by law and by the provisions of this act.

Now, will any one pretend that that prescribes a place or places of election? What place or places? Would a law which provided that any elector of Michigan should vote at any *place*, within or without the State, where he might happen to be on the day of the election, prescribe a place of voting? This is too clear, I submit with all deference, to admit of argument. If Congress or the legislature can prescribe places of election outside of the State, I insist that the *places* must be named in the act; and that it is no compliance with the Constitution to provide that a man, or company of men, may vote at any place where they may happen to be on the day of election, and that such a law does not prescribe a *place* of election at all.

If the above positions, or any one of them, be correct, it follows that all votes cast for either Mr. Trowbridge or Mr. Baldwin outside of the State of Michigan were cast without any authority of law, and cannot properly be counted in making up the result, and, consequently, that Mr. Baldwin is entitled to the seat.

I therefore propose, as a substitute for the resolution reported by the committee, the following:

*Resolved*, That the Hon. Rowland E. Trowbridge is not entitled to hold the seat now occupied by him in this House as a representative from the State of Michigan.

*Resolved*, That Augustus C. Baldwin has been duly elected as a representative from the State of Michigan to the thirty-ninth Congress, and is entitled to a seat in this House.

S. S. MARSHALL.

---

### WASHBURN vs. VOORHEES.

Frauds may be of such a character as to taint the entire poll, in which case only votes subsequently proved can be counted.

In this case the tainted poll unseated the sitting member and admitted the contestant.

The House (February 23) adopted the report, yeas, 87; nays, 36.

February 19, 1866.—Mr. Dawes, from the Committee of Elections, made the following report:

*The Committee of Elections, to which was referred the memorial of Henry D. Washburn, contesting the right of the Hon. Daniel W. Voorhees to a seat in this House as a representative from the seventh congressional district of Indiana, submit the following:*

The election here contested was held on the second Tuesday of October, 1864, in the seventh congressional district of Indiana, composed of the counties of Parke, Vermillion, Vigo, Clay, Putnam, Greene, Owen, and Sullivan. The entire record of the case will be found in Mis. Doc. No. 11 of the present Congress.



The following is the official canvass:

	Daniel W. Voorhees.	Henry D. Washburn.
Vote of Clay County .....	1, 406	1, 089
Vote of Greene County .....	1, 466	1, 262
Vote of Owen County .....	1, 544	1, 086
Vote of Parke County .....	1, 210	2, 113
Vote of Putnam County .....	2, 112	2, 076
Vote of Sullivan County .....	2, 181	750
Vote of Vermillion County .....	696	1, 064
Vote of Vigo County .....	2, 215	2, 856
	12, 830	12, 296

Showing an official majority for Mr. Voorhees, the sitting member, of five hundred and thirty-four.

The notice of contest contains fourteen specifications of alleged illegal voting; illegal and fraudulent conduct of officers of election; illegal and fraudulent tampering with ballot-boxes, and false returns of the actual number of votes cast at the voting precincts in a large number of towns in the counties of Sullivan, Vigo, and Putnam. But no testimony was taken in support of these allegations, except in respect to some voting precincts, viz, that at Hamilton, in Sullivan County, that at Jefferson, in the same county, that of Riley, in Vigo County, and that of Cloverdale, in Putnam County.

The answer of the sitting member denies all of the allegations of the contestant in his notice, and alleges in return like illegal voting for the contestant, and other frauds committed in the interest of the contestant. But as the sitting member took no testimony in support of his allegations, there will be no further occasion to consider his answer.

At the commencement of the hearing before the committee the sitting member made a motion to upset the entire testimony taken by the contestant, because, as he alleged, it had not been taken before a person authorized by law to take the same. It was taken before Albert Lange, mayor of the city of Terre Haute, in the county of Vigo, in said district, but was not taken in the city of Terre Haute, but in the towns of Sullivan, Sullivan County, Cloverdale, Putnam County, Carlisle, Sullivan County, and Lockport, Riley Township, Vigo County. The statute of the United States under which these proceedings are conducted contains (Stat. at Large, vol. 9, p. 568) the following provision:

That when any such contestant or returned member shall be desirous of obtaining testimony respecting such election, it shall be lawful for him to make application to any judge of any court of the United States, or to any chancellor, judge, or justice of a court of record of any State, or to any mayor, recorder, or intendant of any town or city in which said officer shall reside, within the congressional district in which such contested election was held, who shall thereupon issue his writ of subpoena, directed to all such witnesses as shall be named to him, requiring the attendance of such witnesses before him, at some time and place named in the subpoena, in order to be then and there examined respecting the said contested election, in the manner hereinafter provided.



But the statutes of Indiana (G and H, vol. 2, p. 576) confer authority to administer oaths upon a mayor of a city only within the city of which he is mayor; and it is contended by the sitting member that the oath administered by the magistrate in taking these depositions was administered by virtue of his office of mayor, and therefore, when administered outside of the city of Terre Haute, was administered without authority. But the committee were of opinion that the authority to take these depositions was derived, not from the statutes of Indiana, but from the statute of the United States already cited—the mayor of a city being one of the persons designated in that statute to take such depositions, and that we would have been authorized, as such designated person, to take these depositions had the statutes of Indiana conferred upon him no power to administer oaths. Indeed, the power to administer oaths within their respective cities was not conferred by the statutes of Indiana at all upon mayors till the year 1861. (See Indiana Statutes, 2d vol., Gavin and Hord, p. 576.) Yet, during all the time since the passage of the United States act of 1851, before cited, the mayor of any city within the district has been a person designated to take depositions in a case of contested election. The committee, therefore, denied the motion to reject the testimony.

The allegations of fraud made by the contestant against the poll in the aforesaid voting precincts of Hamilton, Jefferson, Cloverdale, and Riley are as follows: (Mis. Doc. 11.)

Third. At the voting precinct of Hamilton Township, in the county of Sullivan, in said district, a large number of the ballots or tickets with my name upon them, and which had been voted for me, (the exact number I do not know and cannot state,) were secretly, corruptly, and illegally taken from the ballot-box, after the same had been deposited there, by some person or persons unknown to me, and a large number of ballots or tickets with your name upon them, and which had not been voted for you, (the exact number of which I do not know and cannot state,) were unlawfully and fraudulently put into said ballot-box, and were afterward counted for you by the inspector and judges of election at said precinct, so that it is impossible to tell how many legal votes were given for you at said precinct; wherefore the election at said precinct was and is wholly void.

Fourth. The inspector and judges of election at the precinct of Hamilton, in the county of Sullivan, in said district, illegally announced, as the result of the voting at said precinct, that *five hundred and one* votes had been cast for you, and that only *one hundred and forty-three* votes had been cast for me; whereas, in point of fact, the said number of votes had not been cast for you; but, on the contrary, at least *two hundred and fifty* of the votes polled at said precinct were cast for me, and a large number of the ballots or tickets containing said votes so cast for me were illegally and fraudulently taken out of the ballot-box of said precinct, where they had been deposited by the inspector and judges of election, by some person or persons unknown to me, and a large number of ballots or tickets with your name upon them, and which had not been voted for you, were then placed in said ballot-box illegally and fraudulently in the place thereof, and were afterwards illegally counted for you by said inspector and judges; wherefore the election at said precinct was and is wholly void.

Fifth. At the election precinct of the township of Hamilton and county of Sullivan, in said district, there were at least *two hundred and fifty* votes cast for me; and after the polls had been closed at said precinct the ballot-box, containing the ballots or tickets voted at said pre-



cinct, was secretly and fraudulently opened, after it had been locked by the inspector and judges of election of said precinct, by some person or persons unknown to me, and a large number of the ballots or tickets so voted for me, and with my name upon them, were removed fraudulently and illegally from said ballot-box before the vote of said precinct was counted, and a large number of ballots or tickets with your name upon them, and which had not been voted for you, were fraudulently put into said box, and were afterward illegally counted for you by the inspector and judges of election at said precinct; wherefore the election at said precinct was and is wholly void.

\* \* \* \* \*

Eighth. At the voting precinct of Jefferson Township, in the county of Sullivan, in said district, a large number of the ballots or tickets with my name upon them, and which had been voted for me, were secretly, corruptly, and illegally taken from the ballot-box, after the same had been deposited there, by some person or persons unknown to me, and a large number, at least *fifty* ballots or tickets, with your name upon them, and which had not been voted for you, were unlawfully and fraudulently put into said box, and were afterward counted for you by the inspector and judges of the election at said precinct; wherefore the election at said precinct was and is wholly void.

\* \* \* \* \*

Tenth. At the voting precinct of Riley Township, in the county of Vigo, in said district, a large number of the ballots or tickets with my name upon them, and which had been voted for me, to at least the number of *twenty-five*, were secretly, corruptly, and illegally taken from the ballot-box after the same had been deposited there, by some person or persons unknown to me, and a like number of ballots or tickets with your name upon them, and which had not been voted for you, were unlawfully and fraudulently put into said box, and were afterward counted for you by the inspector and judges of the election at said precinct; wherefore the election at said precinct was and is wholly void.

Eleventh. At the voting precinct of Cloverdale Township, in the county of Putnam, in said district, a large number of the ballots or tickets with my name upon them, and which had been voted for me, (the exact number of which I do not know and cannot state,) were secretly, corruptly, and illegally taken from the ballot-box after the same had been deposited there, by some person or persons unknown to me, and a large number of ballots or tickets with your name upon them, and which had not been voted for you, (the exact number of which I do not know and cannot state,) were unlawfully and fraudulently put into said ballot-box, and were afterward counted for you by the inspector and judges of election at said precinct, so that it is impossible to tell how many legal votes were given for you at said precinct; wherefore the election at said precinct was and is wholly void.

Twelfth. The inspector and judges of election at the precinct of Cloverdale Township, in the county of Putnam, in said district, illegally announced, as the result of the voting at said precinct, that only *sixty-one* votes had been cast for me; whereas, in point of fact, at least *one hundred and thirty* of the votes polled at said precinct were cast for me; and a large number of the ballots or tickets containing said votes so cast for me were illegally and fraudulently taken out of the ballot-box of said precinct, where they had been deposited by the inspector and judges of election, by some person or persons unknown to me, and a large number of ballots or tickets with your name upon them, and which had not been voted for you, were then placed in said ballot-box illegally



and fraudulently, in the place thereof, and were afterward illegally counted for you by said inspector and judges; wherefore the election at said precinct was and is wholly void.

Thirteenth. At the election precinct of Cloverdale Township, in the county of Putnam, in said district, there were at least *one hundred and thirty* votes cast for me; and after the polls had been closed at said precinct a large number of the ballots or tickets containing these votes, and with my name upon them, were secretly, corruptly, and fraudulently removed from said ballot-box, by some person or persons unknown to me, before the vote of said precinct was counted; and a large number of ballots or tickets with your name upon them, and which had not been voted for you, were illegally and fraudulently put into said box, and were afterward illegally counted for you by the inspector and judges of election at said precinct; wherefore the election at said precinct was and is wholly void.

It was claimed by the contestant that, in respect to the four voting precincts before mentioned, he had, under the various forms of allegation here set forth, proved in the record submitted to the committee, and printed in Mis. Doc. No. 11, fraud and error to such an extent as to call for the rejection of the return of the election officers altogether as untrue, and to justify a resort to other evidence to ascertain the vote at these several precincts. There was little dispute before the committee as to the law which should govern this case. It is laid down as a general principle by Cushing, in his treatise on "The Law and Practice of Legislative Assemblies," p. 72, that "if returning officers act in so illegal or arbitrary manner as to injure the freedom of election, the whole proceedings will be void." In a late case in the courts of law—that of *Mann vs. Cassidy*, for the office of district attorney in the city of Philadelphia—the court, in giving its opinion, says: "As the case now stands before us, we should be derelict in our duty did we not unhesitatingly express our conviction that the officers in the election divisions to which we have referred, in the receipt and recording of votes, are so utterly and entirely unreliable that the truth cannot be deduced from any records or returns made by them in relation thereto." \* \* \*. "The entire proceedings were so tarnished by the fraudulent conduct of the officers charged with the performance of the most solemn and responsible duties, that it would have been not only abundantly justified, but it would have been our plain duty to throw out the returns of every division to which we have referred."

The same doctrine has been repeatedly laid down by Committees of Elections in the House of Representatives. (See *Blair vs. Barrett*, Bartlett Contested Elections, p. 308; *Knox vs. Blair*, *ibid.*, p. 520, and cases there cited. See also *Kneass's case*, *Parsons's Select Cases*, p. 553, and *Howard vs. Cooper*, Bartlett, p. 275.) Indeed, the rule laid down in the latter case at page 526 was accepted by both parties as the law which should govern this case, and they took issue upon the facts. The rule is in these words:

When the result in any precinct has been shown to be 'so tainted with fraud that the truth cannot be deducible therefrom,' then it should never be permitted to form a part of the canvass. The precedents as well as the evident requirements of truth not only sanction but call for the rejection of the entire poll when stamped with the characteristics here shown.

Indeed, the proposition is too plain to admit of dispute. To hold as true that which is so false and fraudulent that the truth cannot be deduced therefrom, is to hold to an absurdity. The rule here laid down is none other than the postulate that that which is false cannot be true.



In adopting this rule the committee do not lose sight, however, of the danger which may attend its application. Wholesome and salutary, not less than necessary, in its proper use, it is extremely liable to abuse. Heated partisanship and blind prejudice, as well as indifferent investigation, may under its cover work great injustice. It is not to be adopted if it can be avoided. No investigation should be spared that would reach the truth without a resort to it. But it is not to be forgotten or omitted if the case calls for its application. If the fraud be clearly shown to exist to such an extent as to satisfy the mind that the return does not show the truth, and no evidence is furnished by either party to a contest, and no investigation of the committee enable them to deduce the truth therefrom, then no alternative is left but to reject such a return. To use it under such a state of facts, is to use as true what is shown to be false.

The committee have applied this rule to the testimony offered by the contestant in support of his allegations touching these four precincts, with a full conviction of the character of the rule, and of the caution incumbent upon them in its use; and they now submit the conclusions to which they have arrived under its operation to the judgment of the House.

The statute of Indiana governing elections may be found in the volumes already referred to, (Gav'n & Hard, vol. 1, at pages 307, 309, 311, 637,) and provides that in April, annually, the electors of each township shall elect a "township trustee," who by virtue of such office becomes "inspector of elections" for said township; designates the place where elections shall be held in the same, and appoints, with the consent of a majority of the legal voters who may happen to be present at the opening of the polls, two qualified voters of the precinct who, with himself, shall constitute a board of judges of such election. The ballot-box is provided with a "sufficient lock," and must be locked before the opening of the polls, and the key delivered to one of the judges. An opening is made in the lid of the box, closed with an inside slide. As soon as the election shall have closed, or at any time after the counting has commenced, the board of judges may adjourn the count till the next day, at which time it shall be completed. When such an adjournment takes place, the poll-lists and tally-papers are placed in the ballot-box, with the ballots, which is then locked, and the aperture for receiving ballots sealed. The key is then given to one of the judges, and the box is taken by the inspector, and both are reproduced by them respectively at the time and place of the adjournment, when the count is completed and a return thereof then made by these same judges. There is also provision for an adjournment of one hour for dinner.

The committee were struck with the loose and ineffectual manner in which the ballot-box was guarded against fraud by those provisions. There is not the slightest provision for its examination before proceeding with the voting, for its protection during the intermission, or during the night after election. When an adjournment of the board takes place before completing the count, if the box is only "kept" by the inspector, it matters not how or where. However honest he may be himself, the law has thrown around the box no safeguard against any fraud that might be practiced upon it by others. It even provides for an intermission of an hour in the midst of the heat of the election, and when the poll will be most likely to be surrounded by excited and unscrupulous politicians, and yet fails to make the slightest provision for the safe-keeping of the box during that time. In like manner it provides for an adjournment of the board after the election is over and



before the count is completed or begun. Thus time is given to learn whether the poll in question, or other polls, are close, so that if there existed a disposition to commit a fraud, opportunity strengthens inclination. And yet the inspector may take the box with him and travel during the night, or stop and visit with it a friend till morning—any distance from the voting place, and where those from other voting places congregate. The committee would refrain from animadverting upon the character of State legislation beyond its immediate connection with the subject-matter of their investigation. They believe that the pertinency of these remarks will be apparent as the testimony before the committee shall be examined. To this the attention of the House is now directed, in the order in which it will be found in the document (Mis. No. 11) already referred to.

#### HAMILTON TOWNSHIP.

The official return from this township was (p. 7) for Mr. Voorhees, 498; for Mr. Washburn, 143. The allegation of the contestant is, that the ballot-box at this precinct had been tampered with, so that the return does not state the true poll, and that the whole proceeding was "so tainted with fraud that the truth cannot be deduced therefrom;" and he accordingly demands, in accordance with the rule already stated, that the return be set aside. The evidence offered in support of this allegation will be found, pp. 8-49, inclusive, and is of two kinds: first, to show how many voters actually cast their votes at this precinct for the contestant; and secondly, evidence tending to show an actual tampering with the ballot-box after the close of the polls and before the count was completed. The evidence satisfies the committee that one hundred and seventy men at least voted for the contestant at this precinct. One hundred and sixty-four witnesses testified to their own votes for him, and as to the remaining six not present, the testimony of witnesses that they knew the vote of each to be also for the contestant, left the committee entirely satisfied that this number at least had so voted. There was testimony tending to the same result as to several others, but not sufficiently positive to satisfy the committee. Here is thus shown a discrepancy between the official return for the contestant and the proof of the vote actually cast for him, at this precinct alone, of twenty-seven votes. There was no attempt to show the discrepancy between the vote actually cast for the sitting member and the vote returned for him, nor was any attempt on the part of the sitting member made to explain this discrepancy in the vote for the contestant.

The tally-list would have shown whether these men had actually voted or not, and their old political associations and professions, if in conflict with their testimony, were legitimate evidence to contradict them. The tally-list would also have revealed, if true, four hundred and ninety-eight other names, if so many votes had been also actually cast for the sitting member, and some approximation to that number might have been found to have so testified. But the case was permitted by the sitting member to rest upon the uncontradicted testimony of the witnesses before stated, and the committee left to the conclusion to which that testimony, uncontrolled, must lead them.

In addition to this, the contestant offered testimony tending directly to show an actual tampering with the ballot-box at this precinct. This evidence will be found in Mis. Doc. No. 11, pp. 45-50, inclusive, and the attention of the House is called to it as there recorded in full. From this testimony it appears that at the opening of the polls in the morn-



ing a strenuous but ineffectual effort was made by the friends of the contestant to secure the appointment of one of their number as one of the officers of the election. This was resisted by the friends of the sitting member present at the polls. When several names were proposed for this purpose, a Mr. Hansil, leading in the opposition to it, got up on a store box and spoke in very violent language against the one proposed. Another was then proposed, "or some other friend of the contestant." But "Mr. Hansil replied that he would not trust either of the men proposed, or any other black abolitionist on the board." And so the board of three judges and two clerks was composed of all strong partisans of the sitting member. In this there was no violation of the letter of the law, but what subsequently happened to the ballot-box was made easy by the transaction, and it deserves notice in that connection alone. When the polls were closed at night, this board began the count about dusk, and counted some fifteen or twenty votes, stringing them upon a string as required by law.

They then adjourned for supper, first putting the string of votes in the box on top of the uncounted votes, and the poll-books and tally-papers on top of them. The box was locked and a key given by the inspector to one of the judges. The box was then left on the table in the voting room, and the officers were all gone about an hour to their supper, leaving the box, they knew not in whose presence or to what treatment. On their return, the key handed by the inspector to one of the judges would not unlock the box. Another was tried without success, when the inspector took a key from his pocket which unlocked the box. On opening the box and taking out the poll-books and tally papers, the string of counted tickets which had been placed on top of the uncounted tickets was not there, and considerable search was made for it. It was at last found at the bottom of the box, under the uncounted tickets. The board of election officers, a few days after the election, published a card respecting this matter, which is here inserted entire :

A CARD.—We, the undersigned, judges and clerks of the election held at the court-house in Sullivan on the 11th day of October, 1864, in view of the frauds alleged to have been perpetrated, and in justice to ourselves, avail ourselves of this the first opportunity offered to make the following statement :

Of the frauds charged we know nothing. We saw no act of impropriety by any member of the board while in session ; but that we are satisfied in our own minds that such charges are not without foundation, and we have such opinion upon the following circumstance, to which we are willing at any and all times to be qualified : At the adjournment of the board for supper, which was about dusk, we had counted out between fifteen and twenty tickets, which were strung on a string prepared for that purpose. The string of tickets was placed in the ballot-box on top of the uncounted tickets. The poll-books and tally-papers were then placed on top of the tickets, the box locked, and set on a table in one corner of the room.

When the board met, after supper, the ballot-box was unlocked in our presence by the inspector, the tally-papers and poll-books taken out, but the string of counted tickets could not be seen. The inspector turned to the table in the corner of the room to search for it, and while thus engaged we found the string of tickets in the bottom of the ballot-box, completely covered by uncounted tickets. We are satisfied that the string of tickets could not have got to the bottom of the ballot-box without the same being opened in our absence and the tickets handled.

Respectfully submitted.

PORTER BURKS,  
JAMES A. BEARD,  
*Judges.*  
DANIEL LANGDON,  
BENJ. HAVENS,  
*Clerks.*

I hereby certify that I believe the above statement to be correct. When the box was opened after supper I took out the poll-books and tally-papers, but could not find the string of tickets. Supposing they have been left out, I turned to look for them ;



meantime they were found in the box. It is evident that they were moved while the board was adjourned for supper.

Respectfully,

W. C. GRIFFITH, *Inspector*,

OCTOBER 19, 1864.

The committee do not deem further comment upon this poll necessary. The discrepancy of twenty-seven votes between the return (143) for the contestant, and the number (170) proved to have voted for him; the violent partisan character of all the officers of election adversely to him; the steady purpose of keeping the box in such hands; the leaving it for an hour after dusk at the voting place unguarded and exposed; and finally, the evidence that the box had been opened and an indefinite number of votes changed or abstracted, disclosed by the judges themselves—all compel to the conviction that “the truth cannot be deduced from this return,” and it is accordingly rejected.

But the rejection of a return does not necessarily leave the votes actually cast at a precinct uncounted. It only declares that the return having been shown to be false shall not be taken as true, and the parties are thrown back upon such other evidence as is in their power to show how many voted and for whom, so that the entire vote, if sufficient pains be taken and the means are at hand, may be shown, and not a single one be lost, notwithstanding the falsity of the return. (See *Blair vs. Barrett*, *Bartlett's Contested Election Cases*, pp. 313, 321; *Clark vs. Hall*, *ibid.*, 215.) It was proved, as has already been stated, that one hundred and seventy votes were cast at this precinct for Mr. Washburn. There was also the testimony of four persons that they voted for Mr. Voorhees.

#### CLOVERDALE.

The official returns from this township gave Mr. Voorhees 276 votes and Mr. Washburn 58 votes. The testimony is found in said *Mis. Doc.*, pp. 53–70, inclusive, and is of precisely the same character as that already commented upon in connection with the township of Hamilton. All the authorities and the law applicable to such testimony thus cited are equally applicable here. It is proved that 91 persons voted at this precinct for Mr. Washburn, while only 58 were returned for him. It seems to the committee hardly possible that so large a discrepancy in so small a voting precinct could have been the result of mistake. In this precinct, the count was not made till the next day. In the mean time the inspector took the box and carried it away out of town, from half to three-fourths of a mile from Cloverdale, to the house of a friend, a warm supporter of the sitting member, where he spent the night with it and brought it back the next day, when the votes were counted and the foregoing return made out. There is no direct testimony that anything was done with the box during the night. But it is in evidence that the vote in the whole county was very close, there being, as returned, only twenty-six majority for the sitting member, less than the discrepancy (33) found at this poll. The county ticket was therefore in danger. A strong supporter of the sitting member, by the name of Scott, (p. 69,) came from the county seat that night, a distance of ten miles, to the house where the ballot-box was kept, about three-fourths of a mile from the town, after the owner of the house had gone to bed and had fallen asleep, and spent the night there. The owner of the house testified that he did not know at what time he came, what he came for, and what he did. And his purpose and business, as well as the success which attended it, only appear from the testimony of a wit-



ness who overheard him afterward relate it. But this was hearsay evidence, which the committee rejected. The case against this ballot-box, therefore, rests upon the great discrepancy between the return (58) and the number (91) proved to have voted for Mr. Washburn, the temptation in the close vote in the county, the opportunity for tampering with the ballot-box during the night, and the suspicious visitation of Scott from the county seat during the night, together with such inferences as it is fair to draw from the fact that no witness is contradicted, no testimony is controverted, no suspicious circumstance explained, so easy of explanation by the calling of Scott or the inspector, if the truth permitted it. But as the result to which the committee arrived upon the whole case, as hereafter stated, would not in any aspect be changed, whether this return be rejected or corrected, they did not determine to reject it entirely, however much confidence in it must be shaken in every fair mind by the evidence here adduced. They, instead, gave the contestant the benefit of the discrepancy proved—viz., 33 votes.

#### JEFFERSON TOWNSHIP.

The official return from this township was (p. 7) for Mr. Voorhees, 236 votes; for Mr. Washburn, 24 votes. The evidence relied on to show fraud in this return (pp. 73–80, inclusive) consists wholly in a discrepancy proved between the vote actually cast and that returned for the contestant. It is shown in this record, by the testimony of the voters themselves and those who knew how others absent voted, that thirty-six instead of twenty-four, the returned number, voted for Mr. Washburn. There was no other testimony to show fraud in this ballot-box as the testimony was left by the parties. The committee had the evidence furnished them of correcting all the errors shown, however that might have arisen. They, therefore, did not reject, but corrected this return, giving to the contestant the benefit of the twelve votes here proved and not counted.

#### RILEY TOWNSHIP.

The official return from this township (p. 7) was for Mr. Voorhees, 173 votes; for Mr. Washburn, 88 votes. The testimony (pp. 81–102, inclusive) is similar in character to that already commented upon in connection with other townships.

This testimony shows that there were one hundred and eight persons at least who voted at this precinct for the contestant, while eighty-eight votes only were returned for him. There were six others who were political friends of the contestant, who were proved to have voted at this precinct, but for whom it did not appear beyond their political associations. This was a small precinct, only two hundred and sixty-one votes in all were returned from it. It seemed hardly possible that there could have been an honest mistake of twenty in a vote of eighty-eight. But there was additional evidence touching this ballot-box. On the day of voting the board adjourned for dinner, and dined with the inspector. During the dinner, the ballot-box was placed in the front bed-room, adjoining the dining-room, and opening into another back bed-room. After dinner was over and while the remainder of the board were busying themselves in the dining-room with some outline maps, the inspector went into the bed-room where the ballot-box was and shut the door. He was gone about fifteen minutes. The next morning, on opening the door into the back bed-room, from the one where the ballot-box and the inspector were the day previous, the servant girl could not swing the door back, and on looking behind it she discovered that a nail had been



taken out of the carpet behind the door, and "a quantity of republican votes" put under the carpet. She did not know how they came there, nor how many they were, but sufficient to prevent the opening of the door. During the count of the votes, after the polls were closed, and after all the votes in the ballot-box had been taken out, it was ascertained that the tally-papers did not show as large a number of votes as the poll-books by four or five, and there were no more in the ballot-box to count, so some loose votes were picked up off from the table and counted to supply the deficiency in the number of votes as shown by the poll-books, and still they were one short. Where these votes came from or for whom they were did not appear. It was testified that they did not come out of the box. Neither of these transactions, nor the large discrepancy in the vote before alluded to, was the subject of explanation by the sitting member. He met this testimony by no countervailing testimony. There was no attempt to account for the votes under the carpet nor for the business of the inspector shut up with the ballot-box in the bed-room, nor whence came the votes picked up from the table and counted. The inspector himself was not even called to repel the accusation which this testimony brought to his door. But the sitting member was content to leave the whole testimony unexplained, and the committee to such inferences as are inevitable from the absence of any explanation of testimony of this character. The committee were compelled to the conclusion that this box also had been opened, and votes, no one could tell how many, abstracted therefrom; and that other votes, never in the box, had been counted—no one could tell for whom—and consequently there existed fraud in this return to such a degree that the truth could not be deduced therefrom. They therefore rejected it. One hundred and eight persons, as before stated, were proved to have voted at this precinct for the contestant, and were counted for him by the committee. It only remains to state the conclusions to which the committee have thus arrived on the whole case.

By the official canvass the vote stood as follows:

For Mr. Voorhees.....	12, 830	
Deduct from this rejected return from Hamilton. 498		
Ditto from Riley.....	173	
	<hr/>	671
		<hr/>
	12, 159	
Add votes proved to have been cast for him in Hamilton.	4	
	<hr/>	12, 163
Official canvass for Mr. Washburn.....	12, 296	
Deduct from this rejected return from Hamilton. 143		
Ditto from Riley.....	88	
	<hr/>	231
		<hr/>
	12, 065	
Add votes proved to have been cast for him in		
Hamilton.....	170	
Ditto in Riley.....	108	
Discrepancy proved in Cloverdale.....	33	
Ditto in Jefferson.....	12	
	<hr/>	323
		<hr/>
	12, 388	
Majority for Mr. Washburn.....		<hr/>
		225



If, however, the return from Hamilton alone, where the judges themselves confess that the ballot-box had been opened, be rejected, and the discrepancies in the other townships between the returns and the votes actually cast be simply corrected, then the conclusion would be the same, and the result would then be as follows:

Official return for Mr. Voorhees .....	12, 830	
Deduct from this rejected return from Hamilton .....	498	
	<hr/>	
	12, 332	
Add votes proved to have been cast for him at Hamilton .	4	12, 336
	<hr/>	
Official return for Mr. Washburn .....	12, 296	
Deduct from this rejected returns from Hamilton....	143	
	<hr/>	
	12, 153	
Add votes proved to have been cast for him at Hamilton .....	170	
Add discrepancy proved in Riley .....	20	
Add discrepancy proved in Jefferson.....	12	
Add discrepancy proved in Cloverdale .....	33	
	<hr/>	
	235	
	<hr/>	
		12, 388
		<hr/>
Majority for Washburn .....		52
		<hr/>

The committee therefore recommend the adoption of the following resolutions:

*Resolved*, That the Hon. Daniel W. Voorhees is not entitled to a seat in this House as a representative from the seventh district of Indiana in the thirty-ninth Congress.

*Resolved*, That Henry D. Washburn is entitled to a seat in this House as a representative from the seventh congressional district of Indiana in the thirty-ninth Congress.

#### MINORITY REPORT.

February 19, 1866.—Mr. Marshall, from the Committee of Elections, submitted the following as the views of the minority:

The undersigned, having examined carefully the evidence in this case, have arrived at the conclusion that the Hon. Daniel W. Voorhees was duly elected a representative to the thirty-ninth Congress, and is entitled to retain the seat he now holds. Before going into the merits of the case we will very briefly notice a preliminary question. Mr. Voorhees insists that there is no legal evidence in behalf of the contestant in the case, or before the House; that Albert Lange, as mayor of the city of Terre Haute, had no authority in law to go out of his city and county and take the depositions of witnesses outside of his city; that, having no authority there to swear witnesses, the witnesses were not, in fact, sworn at all, and consequently there is no legal evidence whatever in the case. We believe that the law in this matter is with the sitting member. The only authority that said mayor has by the laws of Indiana to administer oaths is derived from section 1 of the act of March 9, 1861, which provides "that justices of the peace in their



respective counties, notaries public, judges of courts in their respective jurisdictions, mayors of towns and cities *in their respective towns and cities*, \* \* \* be hereby authorized to administer oaths generally, pertaining to all matters wherein an oath is required." (2 Gavin and Hord's Indiana Statutes, p. 577.) And there is no act of the legislature and no law of Congress conferring upon the mayor of a town or city power to administer oaths outside of the limits of his town or city. No one can doubt that an oath administered by a person without authority is a void act. It imposes no legal obligation on the person swearing to state the truth, nor is it punishable under any law for swearing falsely in such a case. It is admitted that the legislature of a State, as well as Congress, may authorize any person by name, or by their official designation, to administer oaths in all cases required under the laws of their respective governments. But in this case no such power is given, and the witnesses are, in fact, not sworn at all. We, however, merely state the point, and leave it for the consideration of the House. We cannot now enter into the argument on the subject.

Admitting that the evidence in the case was taken by an officer authorized by law to swear the witnesses, and to receive and certify the evidence, (which, however, we deny,) we are wholly unable to comprehend upon what possible ground the majority of the committee have come to the conclusion that Mr. Washburn, the contestant, was duly elected and is now entitled to the seat he claims in this House. Mr. Voorhees, the sitting member, was, by the proper canvassers, declared duly elected by a majority of five hundred and thirty-four votes. The returns upon which this result was declared were all made by the duly authorized and sworn officers of the law. And these solemn returns, and this solemnly authenticated evidence, cannot be set aside or overthrown by mere clamor and suspicions unworthy to be called judicial evidence, sufficient to establish fraud, unless we are prepared to disregard all the precedents of the past, and establish one now which will weaken, if not utterly destroy, every guarantee by which a member of a minority party holds his seat in this House. Majorities should not in the day of their triumph and their pride break down those barriers and weaken those guarantees by which minorities are enabled under the Constitution to defend and protect themselves and their rights, lest the flood of error and wrong thus introduced shall sweep away in its resistless torrent every vestige of republican and representative government.

To overcome the large majority by which Mr. Voorhees was declared elected, the contestant charges that in four townships in their congressional district, to wit, Riley Township, in Vigo County, Hamilton and Jefferson Townships, in Sullivan County, and Cloverdale Township, in Putnam county, and said district, great frauds were perpetrated, as follows:

First. That large numbers of illegal and fraudulent voters in said townships cast their votes at said election for the sitting member, D. W. Voorhees.

Second. That large numbers of ballots lawfully cast by legal voters at said election, in said townships, for the said contestant, were illegally and fraudulently taken out of the ballot-boxes and destroyed, and were never counted or returned for Mr. Washburn, the contestant.

Third. That large numbers of ballots with the name of Mr. Voorhees thereon, that had never been voted, were illegally and fraudulently put into the ballot-boxes, and substituted for those for Mr. Washburn that had been destroyed, and that such fraudulently substituted votes were, by the judges and inspectors, counted and returned for Mr. Voorhees,



and aided in making up the majority by which he was returned as elected.

Fourth. That the election in all these townships was so illegally and fraudulently conducted, and is so tainted with fraud, that the election in said precincts was and is wholly void.

I give the substance and gist of the specifications and charges, and confine them to the townships above named, for the reason that there is no attempt to prove any fraud or irregularity in any other township in the district.

Of the truth of the larger part of the charges above set forth there is not even a shadow of evidence; there is not a particle of proof, or an attempt to prove that a single person in the whole district who cast his vote for Mr. Voorhees was not a legal voter and entitled to vote in the township where his ballot was deposited. There is not a particle of proof, or a shadow of proof, that a single ballot for Mr. Voorhees that was not voted was by fraud or otherwise put into the ballot-box and counted for him.

There is no proof that ought to be considered for one moment as sufficient to overturn and destroy the solemnly declared returns of an election, that any one of the judges, inspectors, or officers of election in said townships were guilty of fraud or malversation in the discharge of the duties of their offices.

And it is only by inference, without sufficient evidence, that it can be argued that ballots cast in said townships for the contestant, were in any manner taken from the ballot-boxes before they were counted and the returns made.

There is a great deal of evidence taken for the purpose of proving that a considerable number of votes were cast in each of the above-named townships for Mr. Washburn that were not counted or returned for him. This evidence is offered for a twofold purpose: First. As tending to prove fraud in the election, and thereby to render the election in said townships utterly null and void. And secondly, to increase the vote of the contestant over the vote returned for him. We will therefore consider briefly the evidence relied upon to prove that more votes were cast for the contestant than were counted and returned for him by the judges and inspectors of the election.

In Hamilton Township, Sullivan County, Mr. Voorhees received four hundred and ninety-eight votes, and Mr. Washburn received one hundred and forty-three votes, as returned by the inspector and judges of said township. Mr. Washburn has examined a great many witnesses to show that he received at that township more votes than were thus returned for him; and, giving a very liberal construction to this evidence, we find that there is testimony tending to prove that he received at the poll in said township one hundred and sixty votes, being seventeen votes more than were returned for him by the inspector and judges. But to make up this additional seventeen votes we have to count the votes of twenty men who swear that they voted for Mr. Washburn, but who themselves cannot write their names but merely make their mark, to wit, Christopher K. Boone, John Gilkerson, Solomon Walls, Luke Lucas, William B. Patten, Thomas Johnson, Peter Moore, Champion Shelburn, Christain Canary, Thomas Phipps, Pleasant Boles, William Canary, Robert Canary, Alfred Frinkle, Jacob B. Miller, William R. Gardner, Isaac Hildebran, Vineyard Stark, Absalom Gentry and John A. Watson; and also of one person (Hanson Keen) who was not produced or sworn, but whose vote was sworn to by another person. When it is remembered that the votes were given by ballot, and how easily



any one may be deceived as to how those around him vote, and how easily the voter who cannot read or write may himself be deceived in regard to the character of his ballot, it must be conceded that this evidence is of a very weak and unsatisfactory character, and that we cannot feel at all certain that a single vote was cast at that poll for Mr. Washburn more than were actually counted and returned for him by the inspector and judges.

In Cloverdale Township, Putnam County, there were cast for Mr. Voorhees two hundred and twenty-six votes, and for Mr. Washburn fifty-eight votes. The contestant has produced evidence tending to prove that at said poll he received eighty-nine votes, being thirty-one more than were returned for him by the inspector and judges. But to make up this number we have to count the votes of ten persons, to wit, George W. Dicks, Francis Mullinix, Job Allee, William Leonard, Abraham H. Snodgrass, Andrew Finley, Elisha I. Baldwin, William Minet, William Day, and C. W. Dicks, who testify that they voted for Mr. Washburn, but who cannot themselves write their names; and of twelve others, to wit, Elza Thompson, David Thompson, Payton Albin, Harrison Young, John A. Cross, James H. McCoy, John G. Dyer, Hugh Thompson, William B. Ferguson, David W. Dunkin, Israel Jenkins, and John Dicks, Jr., who were not produced or sworn, but whose votes were testified to by other persons; this being clearly secondary evidence, of a very weak and unsatisfactory character.

In Jefferson Township, Sullivan County, Mr. Voorhees received two hundred and thirty-one votes, and Mr. Washburn twenty-four votes, as returned by the inspector and judges of election. Evidence is offered tending to show that Mr. Washburn, in fact, received at said poll thirty-two votes, being eight more than were returned for him. But to make up this number we have to count the votes of eight persons, to wit, Lewis R. Mathes, James H. Beck, Lacy Wood, Pleasant Posey, Abraham Briant, Andrew Geariner, Jacob W. Beck, and James Jowett, who testify that they voted for Mr. Washburn, but who cannot themselves write their names; and of three others, to wit, Lewis Solomon, Philip Solomon, and Frederick Hinkle, who were not produced or sworn, but whose votes were testified to by others.

In Riley Township, Vigo County, Mr. Voorhees received one hundred and seventy-three votes, and Mr. Washburn eighty-eight votes, as returned by the inspector and judges. The contestant has offered evidence tending to show that he in fact received one hundred and seven votes at said poll, being nineteen votes more than were returned for him. But to make up this additional nineteen votes we have to count the votes of sixteen persons, to wit, Levi Creach, Solomon Brown, William Fair, James H. Gilcrease, John Haney, John Taylor, Ezra M. Lowe, George Brown, Alexander Green, William Salmon, William Henry, John B. Creech, Hase Lynn, J. W. Smith, Isaac Lowe, and Abraham Latta, who swear that they voted for Mr. Washburn, but who cannot themselves write their names; and of twelve others, to wit, Hugh Maynard, David Joslin, James Franklin, George Bobo, Robert Leak, Timothy Higgins, Alonzo Ash, John Bowers, David Ward, Henry Lee, James M. Pearce, and Amos Hickson, who were not sworn or examined, but whose votes were testified to by others.

It appears then, from this analysis of the evidence, that in the four townships named, there were returned for Mr. Washburn three hundred and thirteen votes, and that taking everything that has the semblance of legal evidence on the part of the contestant, it tends to prove that in those four townships he received three hundred and eighty-



eight votes, being seventy-five more than what were returned for him. But that to make up this additional seventy-five votes, we have to count the votes of fifty-four men, who, while they swear that they voted for the contestant, show, by making their marks to their signatures, that they cannot write their names; and twenty-eight others who are not produced or sworn, but whose votes are testified to by others.

It certainly cannot be necessary to remark further upon the very weak and unsatisfactory character of this evidence. How easy is it for an unlettered man to be mistaken or deceived in regard to the character of the ballot that he delivers in at the polls? How easy for any man to be mistaken in regard to the vote cast by another, although standing near him when his ballot is deposited? How many are there, as we know from observation, who will receive from a friend or acquaintance a ballot, and profess to vote it, when, in fact, they substitute for it another and different ballot, more congenial to their own views or feelings? Both classes of evidence, by which it is attempted to prove these 82 votes, when analyzed amount to nothing on earth but *hearsay* evidence. An unlettered man voting by ballot has no means of knowing for whom he himself votes, except by relying upon the unsworn statement of other parties, who furnish him his ballot and explain to him its character. And a man standing by or near the polls has no means of knowing how another votes, except by relying upon the unsworn statement of the person voting. For although the witness may have furnished a ballot to the voter and followed him to the polls, it is so easy to substitute one ballot for another before delivering it to the inspector or judge of election, that our knowledge of how another votes who has not been sworn is based at last upon our confidence in his integrity and truthfulness, in other words, in his unsworn statement. It amounts simply to *hearsay* evidence and nothing else, which, however we may rely and act upon it in the ordinary transactions of life, is not permitted to have any weight in any judicial tribunal on earth that has regard for the principles of the common law.

We have thus far not noticed the fact that Mr. Voorhees was not able to attend at the examination of any of the witnesses, and have examined the evidence, such as it is, on the hypothesis that all the witnesses examined were of the most unblemished character. And, indeed, the sitting member has taken no testimony, and none of the witnesses sworn is attacked or impeached. But it should not be forgotten that this is an attempt to set aside and destroy the sworn return of the regularly authorized officers of the law, and that in times of great party excitement it is unfortunately, in many cases, but too easy to find witnesses who are more anxious to achieve a party victory than to weigh and consider carefully and conscientiously the testimony which they give.

But admitting that these seventy-five additional votes have been sufficiently proved to justify their allowance to Mr. Washburn, and adding that number to the vote returned for him from those townships, it but reduces Mr. Voorhees's majority that much, and still leaves him the duly elected member by a majority of four hundred and fifty-nine votes.

Before leaving this branch of the subject it is proper to add that, of all the votes proved for Mr. Washburn, there is no evidence that the name of one of them was on the tally-lists or poll-books, or that any one of them was a legal voter in the township or district in which it is claimed that he voted.

But it is claimed that there is fraudulent conduct proved against the inspectors, judges, and others having control of the ballot-boxes in



said township, sufficient to taint and corrupt the entire proceedings at said polls, and to make the whole election in said townships utterly null and void. In considering these charges, and the evidence thereon, we should not fail to remember—

1st. That it is not claimed that either one of said townships was otherwise than democratic, or that Mr. Washburn had a majority of friends and supporters in any one of them.

2d. That it was admitted before the committee that Mr. Washburn received, and had *returned* for him in said district, a larger number of votes than were cast at the presidential election, one month later, for Mr. Lincoln, which fact certainly tends to prove that he could not have been defrauded out of many votes.

3d. That *fraud*, when charged, must be proved; and that it never can legally be *presumed* from mere suspicious circumstances, however strong they may be deemed, that a mere discrepancy between the number of votes returned and the tally-lists, or the number that may afterward be proved to have been cast, has never, in any judicial or legislative inquiry, been considered as evidence of fraud at all tending to affect the validity of the election; and that if it should be held to have that effect, no election could be sustained, and every one in the United States could be defeated and destroyed; for there is, probably, scarcely a precinct in the whole country where discrepancies of this character may not be found or *proved* to exist. The class of men who must be taken for judges and clerks of election, in all rural districts, and the hurry, bustle, and noise around the polls when the election is taking place, makes such discrepancies a matter of course, and their entire absence would be a more suspicious circumstance than their presence.

Keeping these considerations in view, then, what is the character of evidence upon which it is attempted to vitiate and wholly destroy the elections in these townships, declare them null and void, and thereby give a seat in this House to a gentleman whom, it is no exaggeration to say, no sane man, after looking over the record, can say ever received a majority of the legal or, indeed, other votes of his district.

#### FRAUD IN THE ELECTION.

The whole of the evidence upon which fraud is charged, and upon which the contestant relies to taint the election in these townships, and thereby declare them null and void, is here given. That which applies to Hamilton Township is as follows:

#### HAMILTON TOWNSHIP.

DANIEL LANGDON, a witness for contestant, being duly sworn, deposes as follows:

Question. State if you know what persons constituted the election board at Hamilton Precinct or Township, Sullivan County, Indiana, at the general election in October, 1864.—Answer. William C. Griffin was the inspector, James A. Baird and Porter Burks were the judges, Benjamin F. Havens and myself were the clerks.

Q. State what you know in relation to any interference with the ballot-box at said election; give any circumstances you may have observed on that point.—A. I know nothing positively; all I know is from circumstances. All the circumstances that came under my observation are the following: When the board adjourned for supper there were about fifteen or twenty tickets counted out and strung on a string. The strung tickets were placed in the ballot-box, on top of the unstrung tickets, the tally-papers and poll-book were placed in the box, on top, and the box closed, I don't know whether the box was sealed up or not, nor could I state to whom the key was given. When we met after supper the ballot-box was placed on the table, and James A. Beard tried to unlock it with a key he had, but could not unlock it. The inspector then took the key and tried to unlock it, but failed; he then got another key and unlocked the



box. The poll-books and tally-papers were taken out, but the counted tickets could not be seen, but were finally found, covered up with uncounted tickets.

Q. Could those counted tickets which were strung have got where they were found unless the box had been opened in your absence?—A. I think not.

Q. What time did the board adjourn for supper; and how long were they at supper?—A. They adjourned about dusk, and were gone about an hour; the ballot-box was left in the library room, where the votes were received, at the court-house.

Q. Where did the inspector get the key with which he unlocked the box?—A. I don't know; he had several keys at the time; I think he got it in his pocket.

Q. For whom did you vote for Congress?—A. For D. W. Voorhees.

Q. What was the politics of the rest of the board?—A. They were all democrats.

Q. Was there any political friend of Colonel Washburn on the board?—A. There was none.

Q. Was there any effort made by Mr. Washburn's political friends to put any of his political friends on the board, or to divide the board between democrats and republicans?—A. There was an effort made to that effect in the morning before the board was organized.

Q. Was that effort opposed; and if so, by whom?—A. It was opposed by several of the democratic party. Mr. Hansill appeared to take the lead.

Q. Is that the same Mr. Hansill who appears for Mr. Voorhees in this case?—A. Yes.

Q. Did you touch the ballot-box while the board were adjourned?—A. I did not.

Cross-examined :

Q. How were the judges elected?—A. By the bystanders, a majority of whom were democrats.

Q. Were many republicans present when the election of judges by the bystanders took place?—A. There were several present; a good many.

Q. Did the republicans nominate any person for judge; and whom did they nominate?—A. They proposed the names of J. F. Martin and James W. Hinkle, but there was no vote taken upon it.

Q. Is Mr. Martin not an officer under President Lincoln? If so, what office does he hold?—A. He is postmaster at the town of Sullivan, in Sullivan County, Indiana.

Q. Is Mr. Hinkle not considered as a very warm republican?—A. He is firm in his principles, but not an active partisan; rather conservative.

Q. Was, at the October election, 1864, Mr. Hinkle a candidate for office; and if so, what office?—A. He was a candidate for county commissioner at said election.

Q. What was the political character of the judges elected by the bystanders?—A. They were firm democrats, but not active partisans.

Q. Who appointed the clerks?—A. I do not know positively; but it is my impression that the inspector and judges appointed them.

Q. State whether Mr. Havens, one of the clerks, is an active partisan.—A. I cannot say positively; I think he is not.

Direct examination resumed :

Q. Look at Exhibit XX, herewith presented to you, and state whether it is a correct copy of a paper signed by you and the rest of the board of election.

(Question and answer objected to.)

A. It is.

DANIEL LANGDON.

#### EXHIBIT XX.

A CARD.—We, the undersigned, judges and clerks of the election held at the court-house in Sullivan on the 11th day of October, 1864, in view of the frauds alleged to have been perpetrated, and in justice to ourselves, avail ourselves of this the first opportunity offered to make the following statement :

Of the frauds charged we know nothing. We saw no act of impropriety by any member of the board while in session; but that we are satisfied in our own minds that such charges are not without foundation, and we have such opinion upon the following circumstance, to which we are willing at any and all times to be qualified: At the adjournment of the board for supper, which was about dusk, we had counted out between fifteen and twenty tickets, which were strung on a string prepared for that purpose. The string of tickets was placed in the ballot-box on top of the uncounted tickets. The poll-books and tally-papers were then placed on top of the tickets, the box locked and set on a table in one corner of the room.

When the board met, after supper, the ballot-box was unlocked in our presence by the inspector, the tally-papers and poll-books taken out, but the string of counted tickets could not be seen. The inspector turned to the table in the corner of the room to search for it, and while thus engaged we found the string of tickets in the bottom of



the ballot-box, completely covered by uncounted tickets. We are satisfied that the string of tickets could not have got to the bottom of the ballot-box without the same being opened in our absence and the tickets handled.

Respectfully submitted.

PORTER BURKS;  
JAMES A. BEARD,  
*Judges.*  
DANIEL LANGDON,  
BENJAMIN HAVENS,  
*Clerks.*

I hereby certify that I believe the above statement to be correct. When the box was opened after supper I took out the poll-books and tally-papers, but could not find the string of tickets. Supposing they had been left out, I turned to look for them; meantime they were found in the box. It is evident that they were moved while the board was adjourned for supper.

Respectfully,

W. C. GRIFFITH, *Inspector.*

OCTOBER 19, 1864.

JAMES A. BEARD, being sworn, deposes as follows:

Question. State whether you were one of the judges of the election held at Hamilton Township, Sullivan County, Indiana, in October, 1864; and if so, state all the facts and circumstances you may have observed in relation to any interference with the ballot-box at said election.—Answer. I acted as one of the judges at said election. I saw nothing wrong until we returned after supper. Before adjourning for supper the polls had been closed, and we had counted about fifteen or seventeen tickets; when we adjourned, the string with the counted tickets was placed in the ballot-box, on top of the uncounted tickets; when we met after supper, and the box was opened, the string with the counted tickets could not be seen; I looked in for it, turned over the tickets, and found the string with the counted tickets at or near the bottom of the ballot-box.

Q. Could the counted tickets on the string have got where you found them unless the box had been opened in your absence?—A. I do not think they could, unless the box had been shaken.

Q. Were inspectors, judges, and clerks all together during adjournment?—A. They separated; I went home to supper.

Q. Was the box locked when you adjourned?—A. I think it was; I did not lock it myself; I think Major Griffith locked it; he handed me a key; I kept the key, and handed it back to Major Griffith when the board met at the room where the election was held.

Q. Where was the box left when you adjourned?—A. In the voting room in the court-house.

Q. Did you, or any one of the board, to your knowledge, touch or open the box during adjournment?—A. I did not, and the others did not, to my knowledge.

Q. Did the key which you had (I mean the key which Major Griffith gave you) unlock the box when you came back?—A. I cannot say positively. Major Griffith gave me the key at the adjournments for dinner and supper, both, and at one of these occasions upon my return the key which I had would not unlock the box.

Q. Who did you vote for?—A. For D. W. Voorhees for representative in Congress.

JAMES A. BEARD.

WILLIAM C. GRIFFITH, being duly sworn, deposes as follows:

Question. State whether or not you were the inspector of the election held in Hamilton Township, Sullivan County, Indiana, on the second Tuesday in October, 1864; and if so, state what you know, if anything, in relation to any interference with the ballot-box at said election; state any circumstance you may have observed.—Answer. Yes; I was inspector of the election referred to; saw nothing to create any suspicion that the ballot-box was tampered with, as the ballots and names of voters balanced. Some few days after the election the judges and clerks of said election called my attention to the fears entertained by them of fraud being practiced. Their grounds of alarm were, as stated by them, that Mr. Beard found the strung tickets under the unstrung tickets. My knowledge of the case is this: we adjourned for supper about or after sunset; when we returned the tally-papers and poll-books were taken out by myself, but could not find the strung tickets. I turned to the table, remarking to the judges that they had failed to place them in the box, but before I was through looking for them Mr. Beard found them under the unstrung tickets, as above stated. This circumstance satisfied me the box had been tampered with; but on reflection, the strung tickets might have been turned under the unstrung tickets while I was searching for a bunch of tickets, not thinking at the time that there were only fifteen or twenty tickets strung.

Q. Did you or any one, to your knowledge, open the box during adjournment?—A. I did not, and don't know of any one else.



Q. Where was the box left during your adjournments?—A. It was left in the library-room, in the court-house.

Q. Did you give the key to James A. Beard when the board adjourned?—A. I did. Upon the reassembling of the board the key which I had given to Beard, and which he returned to me, would not unlock the box, and I thereupon took another key from my pocket, with which I unlocked it. I don't remember whether this happened after dinner or after supper. Before giving the key to Mr. Beard I had it in my pocket, with two or three keys of the same size.

WM. C. GRIFFITH.

PORTER BURKS, being duly sworn, deposes and says as follows:

Question. State whether you were one of the judges of an election held in Hamilton Township, Sullivan County, Indiana, in October, 1864; and if so, state all the facts and circumstances you may have observed in relation to any interference with the ballot-box at said election.—Answer. I was one of the judges of said election. When we went to supper we had some fifteen or twenty tickets counted out which I had strung on the string, and I placed, when we left, these strung tickets on the uncounted tickets in the box. When we came back from supper and had the box opened, the strung tickets were not on top of the uncounted tickets; they were subsequently found further down in the box, and pulled out.

Q. Did you, or any of the board, handle the box after you had adjourned for supper, and before you returned?—A. I did not; and if others did, I do not know it.

PORTER BURKS.

SEWELL COULSON, a witness produced on the part of the contestant, being duly sworn, deposes and says:

Question. Do you know of any persons voting at Hamilton Township, Sullivan County, Indiana, at the election in October, 1864, who are now absent?—Answer. John Kelley, now absent with the forty-third regiment, voted.

Q. Do you know for whom he voted for representative in Congress?—A. Yes; for Colonel Washburn; I saw his ticket, and saw him vote it.

Q. State whether or not you were present at the election of the judges of said election.—A. I was present.

Q. State how it was conducted, and what was said by Samuel R. Hansill, the present attorney for D. W. Voorhees.—A. When the inspector of the election, Major Griffith, announced to the persons collected there that he was ready to receive nominations for judges, Mr. Hansill nominated James A. Beard; my brother, Uriah Wilson, nominated Joseph Martin, postmaster of the town of Sullivan; and Thomas McIntosh nominated Porter Burks. Beard and Burks were democrats; Martin is a republican. Before the vote was taken for the election of the judges considerable discussion was going on about having a mixed board, in which the inspector, Mr. Samuel R. Hansill, James W. Hinkle, and myself participated. The inspector seemed to think that each party should be represented on the board. Mr. Hinkle and myself insisted on it as a matter of right; we asked it as a matter of favor to let us have one member of the board, to settle all disputes in regard to the fairness of the election. Mr. Hansill got up on a store-box (I think) and spoke in very violent language against Martin serving on the board. I then proposed to put Mr. Hinkle or some other of our friends on the board. Mr. Hansill replied that he would not trust Mr. Martin, Hinkle, or any other black abolitionist, on the board. At this time somebody to my left said that he withdrew the nomination of Porter Burks. Mr. Hansill urged that the vote on Beard be taken, and he was the first man elected. Mr. Hansill then insisted that the vote be taken on Porter Burks; his name was put to vote, and no vote was taken upon the nomination of Martin, or any other republican.

Cross-examined:

Q. Did not the inspector read the statute law, to the effect that the bystanders had the right to elect the judges?—A. Yes, he read it.

Q. Was not a majority of the bystanders democrats?—A. I cannot say that.

Direct examination resumed:

Q. State where the election of judges was held.—A. Outside the court-house, in the court-house yard.

Cross-examined again:

Q. Was not the election of judges held within a few feet of the window where the election was held and the votes taken in on said election day?—A. The crowd of people extended from the window where the votes were taken in some ten or fifteen yards.

Q. How far did the inspector stand from that window?—A. About four or five feet.

SEWELL COULSON.



Now, where is the evidence of fraud in all this? You may say that it is sufficient to excite some suspicion, but you cannot go beyond that. Upon whom, upon which one of the judge's inspectors or clerks of election have you fixed fraud? Can you say that the ballot-box was opened or improperly tampered with at all? Is it not manifest that the ballot-box might have been shaken in some way, or by some one, without being opened at all, and the strung tickets thereby turned under the others? Can you say upon any satisfactory evidence that Mr. Washburn lost a single vote that was cast for him at this precinct?

#### CLOVERDALE.

The evidence relied upon to establish fraud in this township is as follows:

A. B. BAIRD, being heretofore sworn, deposes as follows:

Question. State what conversation you had or heard, if any, soon after the October election, 1864, between or with James A. Scott and others in regard to the election in Cloverdale Township.—Answer. I heard Mr. Scott say, a few nights after the October election in 1864, that, after the poll was counted out at Greencastle, he and a friend came to Cloverdale; found the ballot-box at Mr. Aker's, near Cloverdale; that they arranged the box, as they had reports from all the townships in the county, by which they knew they were beaten unless they could save the election at Cloverdale; and that he afterward returned to Greencastle and told his friends to double their bets. This conversation occurred at Rickett's Hotel in Greencastle.

Q. State, if you know, what the politics of Mr. Scott is.—A. He is a democrat or butternut and a supporter of D. W. Voorhees, and is a leader of the democrats in Putnam County. I don't think that he knew when he made the above remarks that I was in the room. He was talking to other democrats, being several of them—perhaps ten or fifteen—in the room. I was the only Union man there. Austin Puett, Pat. Haney, and Sol. Akers were there, and are leading democrats—Puett being representative from Putnam County to the legislature, to which he claimed to be elected at the October election, 1864.

A. B. BAIRD.

SOLOMON AKERS, being duly sworn, deposes as follows:

Question. State where you live.—Answer. About half a mile from Cloverdale.

Q. State whether or not any person other than your own family staid all night with you on the night of the October election, 1864; and, if so, who?—A. Arabiam Davis, the inspector of the election, staid at my house that night.

Q. Did Davis have the ballot-box with him that night?—A. He had it with him.

Q. State whether or not any other person or persons were at your house that night after bedtime; and, if so, who were they?—A. James A. Scott was there after bedtime.

Q. What hour of the night did he come to your house?—A. I think it must have been after ten o'clock. I had gone to bed when he came, and was asleep.

Q. What is your politics, and for whom did you vote for Congress at the October election, 1864?—A. I am a democrat, and voted for D. W. Voorhees.

SOLOMON AKERS.

REUBEN MCGINNIS, being heretofore sworn, deposes as follows:

Question. State who constituted the election board in Cloverdale Township, Putnam County, Indiana, at the October election in 1864.—Answer. Arabiam Davis was inspector, James McCoy and myself were the judges, and William Broadstreet and William Hood were the clerks.

Q. At what time did the board adjourn on the day of said election, and at whose instance?—A. After the polls were closed and the box sealed up, Mr. Davis said we would adjourn till to-morrow morning. There were no votes counted when we adjourned. Mr. Davis took the ballot-box with him when we adjourned.

Q. Was the box locked and sealed when you adjourned?—A. The box was locked and the hole in which the tickets were put was sealed; the keyhole was not sealed. McCoy, one of the judges, proposed to seal the keyhole, and Davis said it was not necessary.

Q. What time did the board meet next day?—A. I think it was near nine o'clock until they all came together.

Q. Did you see the ballot-box from the time you adjourned in the evening until you met next morning?—A. I did not see it. Mr. Davis took it, and brought it back next morning at nine o'clock.



Q. What is Mr. Davis's politics?—A. He is a democrat and a supporter of Mr. Voorhees, and a strong partisan.

Q. Where did Mr. Davis live at that time?—A. About three miles southwest of Cloverdale.

Q. Do you know where Mr. Davis staid the night after the election?—A. I only know what he told me; he said he staid at Sol. Akers's. Sol. Akers lives about three-quarters of a mile southeast of Cloverdale.

Q. Are you acquainted with James A. Scott; and, if so, where did he live on the day of the October election, 1864?—A. I know him; he lived at that time at Greencastle, the county seat of Putnam County, ten miles from Cloverdale.

Q. State whether there was a ticket counted out at that election with the name of Joseph Sellers on it for assessor.—A. I examined every ticket; there was no such ticket counted out.

REUBEN MCGINNIS.

Now, where is the evidence of fraud here? No lawyer, I imagine, will insist that what Baird states about what one James A. Scott should have said at Greencastle is evidence. If we are going to disregard and set aside all the rules of evidence we can very easily prove anything on earth, no matter how improbable it may be. Mr. Baird states that he heard Mr. Scott say that he and a friend arranged the ballot-box; and it is proved that Mr. Davis, the inspector, staid the night after the election at the house of Sol. Akers, and had the ballot-box with him; that Scott was at the house of Akers that night; and that Scott and Davis were both democrats, or butternuts. And this is the character of evidence upon which you are called upon to turn out of this house a gentleman who holds his seat by a majority of five hundred and thirty-four votes, as shown by the official returns, and to give his place to his competitor!

#### JEFFERSON TOWNSHIP.

The evidence of fraud in Jefferson Township is the following:

F. A. HARVEY, a witness of lawful age, produced by contestant, being duly sworn according to law by me, deposes as follows in response to questions propounded by the contestant:

Question. State whether or not you voted at the general election held in the State of Indiana on the 11th day of October, 1864; and, if so, at what precinct did you vote, and for whom did you vote, for representative in Congress for the seventh congressional district of the State of Indiana?—Answer. I voted at said election in Jefferson Township, Sullivan County, Indiana, for Colonel Washburn for representative in Congress.

Q. Do you know who constituted the board of election in said township at said election?—A. I know Elias Newkirk was inspector; D. W. Alsom and Elijah Mayfield were the judges, and Samuel Enoch and Thomas Bedwell were the clerks.

Q. What was the political character of the board?—A. By general reputation they were democrats.

Q. Had Colonel Washburn any political friend on that board?—A. None, to my knowledge.

F. A. HARVEY.

Wonderful, indeed! The persons constituting the board of election had the general reputation of being democrats! Ergo! the election was a fraud, and Mr. Washburn ought to have the seat which Mr. Voorhees now unjustly withholds from him. Well has it been said that—

“Trifles light as air  
Are to the jealous confirmation strong  
As proofs of holy writ.”

#### RILEY TOWNSHIP.

The evidence relied upon to establish fraud in Riley Township is as follows:

C. A. RAY, being heretofore sworn, deposes and says:

Question. State, if you know, who constituted the election board for Riley Township, Vigo County, Indiana, at the October election, 1864.—Answer. Wilson Foster and



Henry Christy were the judges, L. A. Ray and Linus Moyer were clerks, and G. W. Hickson was inspector of election.

Q. State whether or not the board adjourned for dinner; and if so, at what time of day; and where did you go to dinner?—A. The board adjourned for dinner about 12 o'clock m., and all members of the board took their dinner at Dr. Hickson's, who was inspector of election.

Q. State where the ballot-box was during the time you eat dinner.—A. In the front bed-room at Dr. Hickson's.

Q. State how long you eat dinner.—A. As near as I can judge, one hour.

Q. State how the front bed-room is situated in Dr. Hickson's house.—A. The two bed-rooms communicate by a door between them.

Q. State whether any member of the board was in the bed-room while you were eating dinner at Dr. Hickson's.—A. After we had eaten dinner, Dr. Hickson went into the bed-room where the ballot-box was, and shut the door after him. He remained in the bed-room, as near as I can tell, from ten to fifteen minutes. While he was in there, the other members of the board were in the sitting-room examining some outline maps.

Q. State how the number of votes counted out of the ballot-box accorded with the poll-books.—A. The tally-papers did not show as large a number of votes as the poll-books by four or five, if I remember rightly. There were some loose votes picked up on the table at which the board sat, and these tickets were counted to supply the deficiency in the number of votes as shown by the poll-book. How these votes got on the table I cannot tell—whether they came from the string of votes in the hands of one of the judges. They did not come out of the box. After the deficiency was discovered, no more votes were taken from the box, because there were no more in the box. I know not where those votes came from. After adding those, they were still one vote short.

Q. What is Dr. Hickson's politics, and who was he supporting for Congress?—A. He is known as a democrat and a strong partisan, and as a supporter of Voorhees for Congress.

Q. Do you know whether there were any Union men who voted at Riley Township, Vigo County, Indiana, at the October election, 1864, whose depositions have not been taken to-day?—A. I do know of the following: James Franklin, Joseph Joslin, George Compton, John J. Ferrill, John B. Kester, and William Jordan, and probably others whom I don't recollect.

C. A. RAY.

MARY LOWE, a witness produced for the contestant, being duly sworn, deposes as follows:

Question. State where did you live on the 11th and 12th of October, 1864, and at the time of the October State election.—Answer. I lived at that time at Dr. Hickson's, in Riley township.

Q. State whether any person other than Hickson's family ate dinner at Hickson's on the day of said election; and if so, who?—A. Mr. Moyer, Mr. Christie, Mr. Ray, Mr. Foster, and the two Misses Lee did eat dinner there on that day.

Q. State what you observed in Dr. Hickson's bed-room a day or two after the election; state all you saw.—A. Next morning after said election, in Dr. Hickson's back bed-room, I found a lot of republican tickets under the carpet behind the door; I don't know how many tickets there were; one tack of the carpet was taken out and the tickets put under the carpet; I pushed the door back, and it would not go back entirely; on looking behind to see what was the matter I found the tickets under the carpet.

her  
MARY + LOWE.  
mark.

Attest:

NATHANIEL LEE.

I repeat the question asked in regard to evidence of alleged irregularities and frauds in the other townships. Where is the evidence of fraud here, to justify throwing out the poll and declaring the election void, much less to give the seat to the contestant? Dr. Hickson was he sworn inspector of the election, having the right by law to have the custody and care of the ballot-box during the adjournments of the board. He invites the other members of the board to his house for dinner; places the ballot-box in his private bed-room. While they are all at his house he has occasion to visit his room and absents himself from his company for ten or fifteen minutes, for what purpose we are not informed. Whether to change his clothes, read letters he had received, write a letter, or whatever it might have been we do not know, and have not one particle



of evidence on the subject. But was his going to the room where the ballot-box was even a *suspicious* circumstance? Unless men's visions are jaundiced they cannot so consider it. If Dr. Hickson left his company it was his duty to go to where the ballot-box was or to take it with him. *He was its lawful and sworn custodian.* If the board had separated for dinner, and the others not gone home with Dr. Hickson, some one of them must have taken charge of the ballot-box and kept it in his custody during the entire time of the adjournment. If Dr. Hickson had had no company with him to dinner, and had taken the ballot-box home with him, and kept it away from all other persons during the one or two hours of the adjournment, would that have been a suspicious circumstance? On the contrary, it would have been precisely what the law required him to do. And if he had contemplated or purposed fraud, would he have invited company to dinner at all? And yet, incredible as it in fact may seem, this is the evidence upon which it is asked of this House to exclude the return and declare the election in this township void.

But we have also the testimony of Mary Lowe, a servant girl, who cannot write her name, and who testifies that on the next morning after the election she found some "republican tickets" under the carpet behind the door in Dr. Hickson's room. How many tickets were there? We don't know. How did she know that they were republican tickets? Could she read them? We are not informed. Whose names were on them? Was Mr. Washburn's? Were they tickets prepared for that or for some former election? for that or some other State or district? Had they ever been in a ballot-box anywhere, or in the hands of a voter of the district, or of any elector anywhere? We are not informed. No witness undertakes or attempts to give us such information. If a clamor had not been raised could we conscientiously say that this evidence raises even a shadow of suspicion against any one? And upon such evidence we are asked by the mere force of numbers to vote Mr. Voorhees out and Mr. Washburn into Congress, contrary, as we confidently assert, to the clearly and legally expressed will of the electors of the district.

After this discussion and presentation of the evidence, we do not deem it necessary to enter into the law bearing upon this case. The statute of the State of Indiana, under which this election was held, sets forth the general principle governing contested elections fully and accurately, and is in perfect accord with the decisions of this House upon the same question from the organization of the government to the present time. That statute provides as follows, to wit:

No irregularity or malconduct of any member or officer of a board of judges or canvassers shall set aside the election of any person, unless such irregularity or misconduct was such as to cause the contestee to be declared elected when he had not received the highest number of legal votes; nor shall any election be set aside for illegal votes, unless the number thereof given to the contestee, if taken from him, would reduce the number of his legal votes below the number of legal votes given to some other person for the same office. (1 Gavin and Hord's Statutes of Indiana, p. 318, sec. 15.)

As this section sets forth the law fully and accurately on the subject, and furnishes a consistent and intelligible rule for our guidance, I will not trouble the House with other references.

We can hardly deem it necessary to urge upon the consideration of the House, the fact that Mr. Voorhees is the duly and regularly returned representative of his district; that he is returned as elected by a large majority; that such return is under all the solemnity and with all the sanctions of the law; and that, to meet this, the burden of proof is on Mr. Washburn, to meet and overcome, with competent and perfectly satisfactory evidence, all those presumptions which the law for the safety, security, and stability of society has thrown around the action and offi-



cial conduct of its sworn officers. That Mr. Washburn has not furnished such evidence we think we have clearly shown. And now, in conclusion, we will add with all due respect that, while the history of legislative bodies furnishes many examples of partiality, wrong, and inconsiderateness in determining contested election cases, discreditable in the highest degree to the majority in those bodies, we believe, if Mr. Voorhees is deprived of his seat and the contestant given a place in this House which the electors of the district never conferred upon him, that the case of Washburn *vs.* Voorhees will deserve to stand out in history, solitary and alone, and occupy a place to itself, and above all others, on the grand roll of partisan outrage and injustice. We therefore offer, as a substitute for the resolutions offered by the majority of the committee, the following:

*Resolved*, That the Hon. Daniel W. Voorhees was duly elected a representative in the thirty-ninth Congress, and is entitled to hold and retain his seat in this House.

SAMUEL S. MARSHALL.  
W. RADFORD:

### DODGE *vs.* BROOKS.

This case turned upon allegations of fraud.

Where an election return is so tainted with fraud that the truth cannot be deduced therefrom, the same must be set aside.

Report adopted, (April 6, 1866,) by yeas, 70; nays, 53.

March 26, 1866.—Mr. Dawes, from the Committee of Elections, submitted the following report:

*The Committee of Elections, to whom was referred the memorial of William E. Dodge, contesting the right of Hon. James Brooks to a seat in this House as a representative from the eighth district in the State of New York, with the accompanying papers, have considered the same and submit the following report:*

The eighth district of New York is composed of the Eighteenth, Twentieth, and Twenty-first wards of the city of New York, and the election here contested was held on the eighth day of November, 1864. The official canvass showed the following result:

For Mr. Brooks .....	8,583
For Mr. Dodge .....	8,435
For Mr. Thomas J. Barr .....	4,544

Giving a plurality (which elects) to Mr. Brooks of 148 votes.

The notice of contest and proofs, submitted by Mr. Dodge, are contained in Miscellaneous Document, No. 7, of the present session. The answer and proofs of the sitting member are contained in same document, part 2d. The pleadings and proofs are very voluminous—those of Mr. Dodge filling 541 pages, and those of Mr. Brooks 330 pages, of printed matter. The allegations of contest, pp. 1–4, (Dodge,) are long, and some of them very vague and uncertain, conforming in no sense to the provisions of the statute requiring a contestant to “specify particularly the grounds upon which he relies in the contest.” The answer of the sitting member, pp. 1–5, (Brooks,) is quite as vague and uncertain,



and abounds in irrelevant matter. If each were stripped of everything but that which could properly be called a "particular specification of the grounds upon which the party relies in the contest," very little would be left in either. The contestant, however, confined his proofs to the allegations affecting four precincts only, viz: 13th district of the 18th ward, 15th district of the 18th ward, 3d district of the 21st ward, and the 7th district of the 21st ward. And the sitting member confined his own proof to a reply to that offered by the contestant in relation to these precincts. It therefore became unnecessary for the committee to examine further the other allegations on the one side and the other.

In the opinion of the committee, there is contained in the several allegations of the contestant respecting these four precincts a distinct allegation of fraud in the election, and error in the return, sufficiently specific to require an answer from the sitting member, and to form the basis of a fair trial of the facts involved in the issues thus made up. Upon these issues the committee have heard the parties attentively and at great length during more than three weeks of daily sittings, and now, after careful deliberation upon all that has been offered of proof and argument, they submit to the House the following conclusions in respect to each of these four precincts, and upon the whole matter referred to them.

The law of New York under which this election was held required a previous register of all the votes in each precinct, and, with one exception, based on particular and specific proof, no one could lawfully vote whose name was not found when he came to the polls upon the register, together with his street and number, if he had any. (Statutes of 1859.) To effect this register the statute required the appointment annually, in each election district, by the board of supervisors, of "three inspectors, to be known as the board of registry for the election districts in which they are appointed; such inspectors to hold their offices for one year, *and to be residents and voters in the district in which they are so appointed.*" These inspectors are required to meet annually, "*at the place designated for holding the poll of said election,*" on Tuesday, three weeks preceding the general election, and organize themselves as a board for the purpose of registering the names of the legal voters of such district; choose one of their number as chairman; swear each other into office; appoint a clerk, if necessary, who shall take the oath required by law of clerks of the polls or of elections; and shall have power to continue in session, for the purposes of this meeting, viz: the making of said list, for two days if at the annual election next prior to said meeting the number of voters in the district of which they are inspectors exceed four hundred. This board is at this meeting to make a list of all persons qualified and entitled to vote at the ensuing election in the election district of which they are inspectors, which, when completed, shall constitute and be known as the registry of electors in said district. The list is to contain the names, alphabetically arranged in one column; "the residence by number of the dwelling, if there be any number; and the name of the street or other location of the dwelling-place of each person." It is made out, in the first place, by putting upon it the names of all persons residing in their election districts whose names appear on the poll-list kept in said district at the last preceding general election, taken from the copy of that list required by law to be deposited after such election with the county clerk. In case of the formation of a new election district since the last election, the list is to be made up by taking from the said poll-list of the old district, of which the new one formed a part, the names of those on the same, entitled to vote in the new district. The list is to



be completed, as far as practicable, on the day of meeting; four copies are to be made and certified to be, as far as known to them, a true list of the voters in said district. Within two days the original from which the four copies are taken, together with the old list taken from the county clerk's office, shall be placed by said inspectors in said office. One of the certified copies shall be, immediately after its completion, posted in some conspicuous place in the room in which said meeting shall be held; that is, in the room designated for holding the election, accessible to any elector who may desire to examine or copy the same. The other three copies are to be kept for future use by the three inspectors. This closes the first duty of the board of registers. A further duty is also required of them by law, and that is to meet again on the Tuesday week preceding the day of general election in their respective election districts, "*at the place designated for holding the polls of election*," at 8 o'clock in the morning, and remain in session till 9 o'clock in the evening of that day and the day following, in open session, where every legal voter in said district shall be entitled to be heard by said inspectors in relation to corrections or additions to said register. One of said copies is to be used by the registers in making the corrections and additions.

The inspectors are thus constituted a judicial tribunal to pass upon the qualification of voters, and are required to then and there erase from the list prepared as aforesaid, (a copy of which is required by law to have been posted up in some conspicuous place in the room designated for holding the election since their last meeting, and where their court is then required to be held,) the name of any person who shall be proved by the oaths of two legal voters of said district to be a non-resident of said district, or otherwise not entitled to vote at the next ensuing election. Any person can procure his name to be entered upon the register if not originally there, by appearing before said board at this meeting, giving his residence, street, and number, and subject to the pains and penalties of perjury for false answers to any inquiries touching his qualifications as a voter, and subject to challenge by any inspector or other voter, and taking the oath that would entitle him to vote at an election. This completes the corrected register which is to be used at the polls on election day. Four copies are to be made within three days after the close of this meeting, which must end in two days—one to be filed in the county clerk's office, and one to be kept for use by each of the inspectors at the election, and the name of each voter is to be checked as he votes upon one of these lists by one of the inspectors, or one of the clerks designated for that purpose. No person can vote at the election if his name is not upon the register thus prepared, unless he shall furnish to the board of inspectors his affidavit giving his reasons for not appearing on the day for correcting the alphabetical list, and also prove by the oath of a householder of the district that he knows such person to be an inhabitant of the district, giving his residence within the district. Any person whose name is on the register may be challenged, and an examination into his qualifications shall then and there be had, such examination being conducted in a manner prescribed by law, but which need not here be set out.

The House cannot fail to observe that the chief safeguard to an honest vote is the fair and honest preparation of this registry in conformity with the provisions of law. The responsibility for the purity of the election is thus made largely to rest upon the board of registry. They are judges in the strictest sense, and there is provided no appeal from their decision. To the end that there shall be other security than their



personal integrity, that every safeguard against mistake honestly fallen into may be thrown around them, it is wisely provided, among other things, that they shall be "residents and voters in the district in which they are so appointed." They thus bring to the discharge of their duty a greater personal knowledge of the district, and the voters residing in it, than they otherwise could. Fraud could be much more readily detected and prevented by such men than by strangers. It is further provided that their meetings shall be public, and in a public place known to all voters in the district, viz: the place designated for holding the election, upon days publicly fixed in the statute, so that every voter in the district shall know beforehand that on given days, and at a given place fixed by statute, this tribunal will hold sessions for purposes as specifically defined in the same statute, and those purposes none other than to pass upon his right to vote. The law also requires that the duties of this board at these meetings shall be discharged by two at least of their number; that whoever acts as their clerk shall be appointed by them, and shall take a prescribed oath to secure his personal fidelity. With these preliminary remarks, the committee call attention to the subjoined facts.

#### FIFTEENTH DISTRICT OF THE EIGHTEENTH WARD.

The direct allegations of the contestant touching this district are as follows:

That the fifteenth district was not legally created and established; that it was not known to bona fide residents of the district; that the inspectors of election themselves ascertained the same only by persistent inquiry on the morning of election day; that the register was fraudulently and irregularly filled with the names of your partisans, most of whom do not reside in the district; that the majority of the names therein were copied from lists handed in by a bar-keeper on the premises, an ardent democrat; that the clerk who acted for the board of registry was neither sworn nor appointed; that the district, only a portion of the original twelfth district from which it was separated, gave more votes than the whole of the twelfth district at the election last year; that the population of the district had not during the twelve-month increased materially; that of these votes then cast for you one-third and upwards were given by parties not qualified to vote.

And the general allegation is in these words:

That other irregularities, defects, and illegalities were permitted or occurred in conducting said election, whereby my rights as a candidate were prejudiced.

The return from this district was as follows:

For Mr. Brooks .....	221
For Mr. Barr .....	168
For Mr. Dodge .....	57

This district had been a part of the twelfth district in this ward till the July previous to this election, when it was by city ordinance set off into a new district by itself, and numbered fifteen; it borders upon the East River, and there are many vacant lots and tenement houses and factories in it. It is commonly known as "Mackerelville," and had a bad reputation in connection with the July riots. The place for holding the polls was first designated November 3, 1864, and was first published November 7, the day before the election; it was designated at "James Thompson's, No. 252 Avenue B."

The places for holding the polls in all the other precincts in the city were published in the public papers, by order of the city authorities, from October 24 until the day of the election. In each of which publications was inserted, "fifteenth district Eighteenth ward not designated," except on the last day of publication, the day previous to the



election, when, for the first time, notice was given of the place where the polls would be open in this district.

The board of registers consisted of W. H. Hall, of 166 East Twenty-sixth street; T. G. Cowen, of 181 East Seventeenth street; and J. Dougherty, of 167 East Twenty-fifth street; neither of them, as the law requires, voters, or even residents in the district. They met and organized on Tuesday, the 18th of October, appointing one Daniel Brady their clerk, who took the required oath of office, but who, being desirous of furnishing employment for a brother of his, by the name of Andrew Brady, substituted his brother in his place, who, without appointment or qualification, performed the labor and received the compensation of clerk. The law requires the board to meet "at the place designated for holding the poll of said election;" but no place for holding this election had as yet been designated, and no notice had been given to the electors of the district of the place where the board of registry would meet. They selected their own place of meeting, but gave no notice to the electors of where they might be heard. They met at the liquor store of James Thompson, the place subsequently designated, on the 3d of November, after their meetings had been by law closed, as the place for holding the election. At their meeting on the first day, no further business was done except the organization of the board. Dougherty then left, and was not present at any further meetings of the board. Hall came the next day and remained till ten o'clock, and then left till four, when he returned, spending several hours in the evening. He did the same on the third day, though the law allowed but two days for this meeting. Cowen, the remaining register, was sometimes present when Hall was there, and sometimes not; he also left on several occasions in Hall's absence, thus leaving the entire duty of the board to be discharged by the self-constituted clerk, Andrew Brady. The names were entered upon the registry; some taken from the poll-book of the old twelfth district; others, to the number of two hundred or more, were taken from time to time by James Thompson, the keeper of the liquor store, and by him entered upon an old account book as persons called at his store. This list of names upon the account book was furnished by him to the registers, and the names transcribed by Brady upon the registry; others were entered, some by Hall when alone, some by Cowen when alone, and some by Brady, in the absence of both; and some by Thompson, the keeper of the shop.

Persons came into the liquor shop, and, in the absence of the board, entered their own and such other names as they pleased upon the registry. One of the registers accused this Brady of entering names purposely with wrong residences, and otherwise erroneously. In this manner was made up what was called and used as the registry of voters at this precinct. From the evidence it appeared that scarcely a quarter of those whose names were upon this register appeared personally before the board, and very few of the names entered upon the registry were entered in the presence or by order of more than one of the so-called registers.

The law requires a certified copy of the registry to be posted up in some conspicuous place in the room designated for holding the election. No place had been designated for holding this election; but such copy of this register was posted up in this liquor shop, but not in the place where the election was subsequently held.

Most of the business transacted by this board at its first meeting was transacted on the twentieth of October, the day after the first meeting of the board was by law closed. The board of registry is required to



meet again, at the place designated for holding the election, on the Tuesday week before the day of the election. The place for holding the election not having as yet been designated, two of this board met at James Thompson's liquor store, as before, for the purpose of correcting the register, prepared as before stated, but without any public notice of the place where they contemplated meeting. Two days after this meeting, James Thompson's liquor store was designated by the city authorities as the place for holding this election, but no notice of this designation was given until the seventh, the day before the election took place.

The election was actually held, not at the place designated, but in a stable on the rear of the lot, "somewhere near his property." The place of voting was found with difficulty by many voters, and even the inspectors of elections themselves were delayed by this difficulty in reaching the polls. The registry thus prepared became the guide of the inspectors of election, and none other was used, and parties answering to the names found upon it were allowed to cast their votes without further question or challenge. The result was a poll for member of Congress of four hundred and forty-six votes, though the largest vote cast in the whole twelfth district, including this district, the year before, was only four hundred and ninety-six, and the remaining portion of district number twelve cast also at this election for member of Congress three hundred and sixty-five votes. Thus it will be seen that the old twelfth, when divided, and by the help of this new registry, was enabled to cast at this election eight hundred and eleven votes, against four hundred and and ninety-six, the largest vote the year before; and yet not a single dwelling-house had been erected in this district during the year, but, on the contrary, one tenement house had been pulled down. There had been apparently no accession of new residents in the district; no appearance of new families; no strange faces. No witness was able to account for this large accession of votes, and one of the inspectors of election, called by the sitting member, testified (page 123) that at the close of the polls, at sunset, between two and three hundred more were shut out from voting for want of time. If these latter were legal voters, as this inspector seemed to think, the large number of legal voters of the district that failed to vote must materially shake confidence in the honesty of the great vote actually cast.

The registry law requires the residence, street, and number, if he has any, to be placed upon the registry, and upon the poll-list when he votes, against each man's name. It is, therefore, only a question of time in ascertaining the residence of every voter in the district.

The contestant, for the purpose of tracing each voter who cast his vote at this precinct, and finding his residence, if he had any, as designated upon the registry and poll-list, employed a responsible person, by the name of Dean, canvasser for the City Directory, to visit each place designated as the residence of the voter. The deposition of this Dean was presented to the committee by the contestant, and objected to by the sitting member; the ground of the objection was, that when the deposition was taken, among the others constituting the proofs of contestant, the ten days' notice required by law for the taking of this deposition had not been given. And it appears that in giving the notice the name of this witness was by clerical mistake left out of the list served upon the sitting member, and the mistake was not discovered until the day the depositions were taken, when it was too late to renew the notice. It also appears that the deposition of said Dean, offered in evidence, was taken in presence of the sitting member and his counsel, and the



deponent was tendered to them for cross-examination, but they declined to cross-examine him for the reasons already stated. The committee were of the opinion that the sitting member was entitled, if he insisted upon it, to the ten days' notice, and that therefore the deposition could not be received.

The contestant then sought to prove the same thing by another witness who had obtained his knowledge of the fact from Dean himself. This was objected to by the sitting member as hearsay testimony, and the objection was sustained by the committee.

The committee therefore were without the benefit of the results of the investigations so made by Dean, however satisfactory they might be in testing the accuracy of the registry and poll-list, and ultimately the honesty of the vote. The sitting member, however, in an effort to sustain this register and identify the voters named upon it, introduced the deposition of one Brennan, (p. 309,) long a resident of the district, an official in the Catholic church near this voting place, and believed to have special knowledge of the residents. His testimony corroborates the other testimony as to the fraudulent character and inaccuracy of this register. Of a list shown him, taken from it, twenty-six, at least, with all his intimate knowledge of the district, he is unable to trace; and many more rely for identification solely on his opinion that they are names mistaken for others in which the imagined similarity is so far-fetched as to become ridiculous. The sitting member further introduced the testimony of a German resident of the district by the name of Jung, most familiar with the German names on the register, who had proceeded in his testimony as far as twenty names on the list shown him, recognizing only four of the twenty as voters, when his further examination in respect to it was suspended and not resumed. The committee regard this testimony of these two witnesses, offered by the sitting member himself, as in no degree weakening, but to some extent sustaining, the charges of the contestants against this poll.

The question raised by the whole testimony submitted in reference to this precinct is, whether there was any legal election held at all in this district, or, otherwise stated, whether the return of an election so conducted can, with any propriety, be said to contain a true account of legal votes cast at this precinct.

The committee are of the opinion that there was no registry at this district; that neither of the persons appointed as registers was competent to hold the office; that the man acting as clerk acted without authority; that the mode of making up the registry itself was a fraud upon the registry law, and in no manner a compliance with its provisions; that the use of such registry at the polls as a guide to the inspectors of election contributed directly to the polling of fraudulent votes, and that the large and unaccounted for increase of votes at this poll is directly attributed to these departures from, and violations of, plain provisions of law, and that to accept the result of such poll so taken and so counted as the true account of legal votes only, is to sanction most inexcusable violations of important provisions of law, essential to the purity of the ballot-box. The committee are therefore of the opinion that this return falls within the principle found in cases heretofore adjudicated and which was laid down in the case of *Washburn vs. Voorhees*, lately sanctioned by this House, namely: "Where an election return is so tainted with fraud that the truth cannot be deduced therefrom, the same must be set aside."

The committee are, however, of the opinion that it was competent for either contestant or sitting member to prove the casting of legal votes



at this poll, even without a register; but, in such case, the voter must make special proof of his qualification to vote in a manner particularly pointed out in the statute; and that it would have been the duty of the committee to have counted all votes so proven, but that no presumption of the legality of any vote would arise from any of the proceedings or returns founded upon so illegal and fraudulent transactions as have been here shown to exist. No proof of any such votes was offered by either contestant or sitting member; nor was it claimed by either that this provision of law was complied with; but, on the other hand, it was totally disregarded. The statute of New York is express, that no vote shall be received except after a compliance with these provisions. For the committee to count votes thus cast would be for them to set up a poll in defiance of the statute provisions of the State, as well as in disregard of well-established precedents in this House. On the other hand, in conformity with those statutes and precedents, they have set aside this return altogether as fraudulent and false, as well as in conflict with express provisions of law.

#### SEVENTH DISTRICT OF THE TWENTY-FIRST WARD.

In this district the contestant charges that "sundry persons voted for the sitting member who were not legal voters or residents of the district—to wit, one hundred and upwards."

The official result in this district was, for Brooks, 160; Barr, 158; Dodge, 71—in all 388. There were given for presidential electors 400 votes. The largest vote given in 1863, the year before, was 202; in 1862, 234; an increase of one hundred per cent. over the vote of the previous year. This is an increase which in a small district attracts attention, and would seem to require explanation. The district is peculiar in its character, consisting principally of a stony elevation on the East River, called Dutch Hill, covered with shanties of a temporary character, not laid out into streets as occupied, nor numbered. While it does not cover any great extent of territory, its peculiarity in this respect furnishes great facilities for the commission of the frauds alleged, and, at the same time, opposes great obstacles to their detection. The people occupying these shanties, which were shown to be of the cheapest and frailest character, built on other people's land, and selling, as personal property, for \$10 or \$15 each, are not of the permanent population of the city, but are constantly coming and going, ever shifting and changing, crowding and huddling, if not hiding away from observation. The registry of voters, if honestly prepared in conformity to the requirements of law already alluded to, would with difficulty furnish direct evidence of the residence of the voter, and therefore temptation to fraud, which impunity of detection always begets, becomes strong. Into such a district, however, no great number of new families could come, bringing *bona fide* voters, without increase of habitations. Yet it was testified by a resident of the ward for the last fourteen or fifteen years, and superintendent of some seven election districts on the day of election, that there was not only no increase in the number of these shanties, but that "a great many of them had been torn away." Where, then, could this increase of voters have resided? An old resident of the district, by the name of Geoghegan, the keeper of two liquor shops in it at the time, and formerly a member of the board of registry in it, at whose liquor shop the election was held, testified to the manner in which this large vote was polled.

The testimony of this witness is so full and striking that the committee



call the especial attention of the House to it. (Pp. 442-479, Mis. Doc. No. 7.) It is too long for insertion in this report, and a perusal of it can only convey a clear understanding of the method resorted to for the purpose of swelling the vote in this district. He, and a comrade by the name of Tracy, had managed the political affairs of the entire district for many years, and in the interest of political friends exercised almost unlimited control over the registry, the ballot-box, and the canvass. Disagreeing from some of his political associates after this election, touching the adjustment of some matters pertaining to it, Geoghegan disclosed to the contestant the means by which this large vote was polled, as detailed in the deposition referred to. The testimony discloses that the registry was taken bodily from that of the previous year, and had been from year to year; keeping on it the names of all who deceased or removed, and adding, from time to time, not only the names of all new-comers, but those of reliable friends, without regard to their residence. On election day men came from all parts, not only of the ward and city, but from the country, and in some instances from other States, and were brought up to the polls by men who understood themselves and their business, and, answering to the names thus entered upon the registry, voted as requested by those directing the affair. Voting by substitute was the appropriate name given to this proceeding. As soon as they voted they disappeared, and returned to their residences. As no one but those under whose auspices these men voted knew of their whereabouts, or even their names, they were comparatively safe from detection.

Of the many schemes devised for defrauding the ballot-box which have come under the cognizance of the committee this is one of the most dangerous. It can be carried to almost any extent, and seems to have hardly any other limit but the capacity and disposition of those who adopt it. Geoghegan himself testifies to having procured thirty votes for the sitting member in this way, and testified to other names on the register and poll-list of men either dead, removed from, or had never lived in the district at all, but on whose names "substitutes" had voted. As to many of these names he was able to remember who personated and voted each, though he was very careful to give no clue to the present whereabouts of any, if he knew. In addition to the thirty whom he led up to vote for the sitting member, Geoghegan also pointed out thirty-five others who were simply names upon the list personated by others, having no right to vote at all, thus making, within the knowledge of this witness alone, a fraudulent vote of at least sixty-five. In relation to several others there was less distinctness and some doubt about the testimony; but from the whole testimony, there appears little doubt, if this witness is to be believed, that sixty-five fraudulent votes are thus shown to have been cast at this poll. But the testimony of this witness was attacked by the sitting member because, by his own showing, he participated in the frauds he exposes, and is thus a *particeps criminis*, and not entitled to the full credit of an unimpeached witness. This is a sound rule of law, from which the committee have no inclination to depart.

The contestant also offered the testimony of one Russell Myers, which will be found in Mis. Doc. No. 7, at page 365, and to which the committee invite the attention of the House. This witness was a deputy United States marshal, and had been an officer serving with credit in the war, and had occupied for many years positions of responsibility. He had taken the register and poll-list of this district, and spent six weeks in searching for the voters enrolled in the manner already stated. The



result of his researches is contained in the deposition before the committee, to which the attention of the House has already been called. After what appeared to the committee to be a very faithful and diligent research, commenced within six weeks of the election, he was unable to find any person to answer to any one of the hundred and nine of the names so enrolled. In this testimony he agrees with Geoghegan as to twenty-three of these names, and to this extent corroborates him. Evidence was introduced by the sitting member to meet this testimony of Myers; and in some instances the witness produced by the sitting member for that purpose was able to find a voter residing in the district and claimed by the sitting member to answer to the same name on the voting list which Myers was unable to find. Some of those were found at a different place from that indicated as their residence on the poll-list, but most of them he claimed to have identified as bearing names more or less similar in sound or orthography with those enrolled. Giving the sitting member the benefit of all thus claimed to be identified, however unsatisfactory the testimony as to some of them may be, and also deducting from the list testified to by Myers the same names included in the list of Geoghegan, in which he corroborates that witness, and which are counted in the sixty-five illegal votes testified to by him, there are still left fifty-one names on the list of Myers about which there can be no question that neither he nor any witness produced by the sitting member could find their residence, or that they had ever lived in the district.

Much of the evidence relied on by the sitting member to correct the list presented by Myers comes from the testimony of Tracy, a witness he himself called, and the associate of Geoghegan in the management of the district, as already stated, and a participant in the fraudulent voting by substitutes, as testified by Geoghegan, if Geoghegan testified truly. He knew whether the testimony of Geoghegan was true or false. His testimony is found in Mis. Doc. No. 7, part 2, p. 234. He testified that he had resided in the ward twenty-five years; knew all about the district, and was present and heard the testimony of Geoghegan, yet he is not even asked to deny it, and is silent upon all the essential matters contained in Geoghegan's testimony, differing with him as to the residence and qualification of a single voter, or two at most. It is difficult to account for his silence if the testimony of Geoghegan, in respect to substitute voting, is false; but if that testimony was true, the silence is explained.

The committee are, therefore, of opinion that the testimony of Geoghegan stands corroborated by both Myers and Tracy; and that, from the testimony of the three, all reasonable doubt is removed, and their finding is that, at this poll at least one hundred and sixteen illegal votes were polled. This number is left after striking from the list every name about which there can be any reasonable doubt. A careful reading of all the evidence would leave much room for difference of opinion as to many more. But the committee base their conclusions solely upon those about which they cannot themselves entertain any reasonable doubt. It will be observed that the whole poll for member of Congress in this district was only three hundred and eighty-nine, and of this number the committee are of opinion that one hundred and sixteen, at least, are fraudulent. There are no means of determining for whom these fraudulent votes were cast, beyond the thirty which is the number one of the witnesses testified that he was certain he succeeded himself in getting to vote for the sitting member, and beyond the further fact that one at least of the parties most actively engaged



in the affair, at whose shop the election was held, and who had the greatest facility for carrying it out, testified that he was laboring in the interest of the sitting member; still, eighty-six of these fraudulent voters cannot by any safe evidence be charged to the count for either of the three candidates. They are, however, in the count, as well as thirty traced to the sitting member, and must have been counted for one of the three. What is the duty of the committee and the House with such a return? It must stand as it is, or be set aside altogether, for the means are not at hand by which the return can be purged of the fraud. Thirty might be taken from the account for the sitting member, but eight six as fraudulent would still be left, and the return thus corrected would contain in it one vote in every four a fraudulent one.

The committee see no alternative but to accept the return and thus sanction the fraud, or set it aside altogether. They cannot doubt that the latter course comes within the precedents of former Congresses and of this committee and of the present House, and they therefore reject the return altogether.

#### THIRTEENTH DISTRICT OF THE EIGHTEENTH WARD.

The allegations of the contestant in respect to this district are as follows:

That in the thirteenth district of the Eighteenth ward the voting was of such a grossly fraudulent character as to involve all concerned in it, either in participation or passive permission, and to render it impossible to sift and purge the poll; that one of the inspectors, already a partisan of yours, was bribed to break every law intended to preserve the purity of the ballot-box to accomplish your election; that this said inspector exchanged places with another partisan of yours who, unsworn, acted as inspector; that another partisan of yours, unsworn and unappointed, acted as poll-clerk; that one of the inspectors snatched republican ballots from the hands of his associates and changed them to democratic amid the applause of disorderly sympathizers in the polling-room; that he refused to receive divers votes intended for me, and all soldier votes, menacing with oaths and imprecations those who offered them, so that his threats and those of his sympathizers prevented, after a certain hour of the day, any citizens from offering soldiers' votes; that during the day persistent attempts were made to bribe to infidelity to his trust one of the republican inspectors; that the same inspector was, on the evening at the close of the election day, for his fidelity, assaulted, struck down, and grievously injured; that in canvassing the votes the greatest frauds were perpetrated, partisans of yours unsworn acted as canvassers, double votes were counted as two each for you, incorrect ballots were counted as correct, and when neither poll-list, tally, nor ballots agreed, two or more of your partisans rushed within the inclosure, and with the pen and pencil labored successfully to conceal and correct the same after the republican canvassers had, under their threats, withdrawn; than in this same district sundry persons were permitted to vote once for you, and others were permitted to vote twice, who were not qualified voters, to wit, two hundred and upward.

This was a river district, like the fifteenth of the same ward, already considered, containing but six blocks of houses, and casting for Brooks, 313; Barr, 138; Dodge, 36—in all, 487. The largest vote the year previous was 347, showing an increase of nearly 50 per cent. The vote for presidential electors was still larger, being 512. The contestant offered in support of his allegations, in respect to this district, the testimony of E. H. Jenny and of John R. Hargin, (at pp. 162 and 186 of document No. 7,) both of them inspectors of the election, and one of them, Hargin, a canvasser after the polls were closed. A man by the name of Connolly was the other inspector of the election, and was also a canvasser. Jenny testified that Connolly, one of his associate inspectors, by threatening him and using violent language toward him, compelled him to permit ballots to be taken frequently with such rapidity that the safeguards of checking the poll-list and examination of voters could not be availed of; threatening even to eject him from his position if he inter-



posed any delay. The witness replied that he might do as he pleased; that it was a good place to die in defense of the sacredness of the ballot-box. The crowd about the polls encouraged and applauded Connolly; that soldiers' votes were in some instances excluded by means of the interference of Connolly and the acquiescence of the other inspectors; that one Jim Irving appeared and called out Mr. Hargin, one of the inspectors.

In the absence of Hargin, an attempt was made to put the bar-keeper of the liquor shop where the election was held in his place as inspector, without any appointment, and that was only prevented by the witness threatening to send for General Butler; that Connolly snatched in one instance a vote for presidential electors from the hand of the witness and substituted another; and that Connolly constantly indulged in the most violent, threatening, and obscene language toward him, in an attempt to bend him to his purposes, threatening to knock him down and thrust him out of the voting place. Hargin testified that while he was acting as inspector of the election he witnessed the disturbances, and heard the violent and threatening language of his colleague, Connolly, towards Jenny, as testified to by Jenny, and much more than was testified to by him—some of it language too obscene to be repeated; and that at the time Irving called him out, the interview as related by him was as follows:

I can't remember the exact language; the nature of it was, he had asked me in to have a drink; I told him I hadn't time; he told me I was not so busy that I couldn't go in and take a drink with him. He said, "O, hell! come in; I will want to see you to-morrow." Says I, "Well, you can see me any time." I said he could see me up there, and he said he had something for me. He came up there on the morning of the election, I presume, in accordance with his promise. After I went out he brought me to one side, and he said, "Here put that in your pocket," handing me some money. I asked him, "What is that for?" "What a damned fool you must be!" he said, "put that in your pocket; take all you get and say nothing." I put the money in my pocket; there were several gentlemen present, and I didn't hide it a bit; they saw it. As I was about going in, says he, "Now, I want to talk to you." Says he, "When votes is on the boxes, don't you trouble yourself much about that registry." Says he, "Let your word be 'down.'" After I came inside I told Jenny what had occurred; he shrugged his shoulders a little bit, and didn't pay any attention to it, apparently. Mr. Irving came a little back, and says, "Don't forget, now." He sung out, "Down with it," several times himself.

Question. What did he mean by saying "Down?"—Answer. That is, down with the vote.

Q. Were you checking the registers?—A. I was, sir; and that was the understanding I had of the expression.

Q. What made you take this money?—A. I thought I might as well take it, and see how far Mr. Irving was going to go.

The witness further testified in reference to the snatching of ballots:

Q. Did you notice any changing ballots that took place there during the day?—A. There was one time Mr. Jenny told me to keep my eye on a ballot he had just passed to Mr. Connolly, and I did watch it.

Q. Am I to understand you as saying that a ballot was offered to Mr. Jenny, and that he handed it to Mr. Connolly, and then called your attention to the fact?—A. The manner of receiving that ballot was this: At the time of this occurrence Mr. Connolly had passed his book over to Assistant District Attorney Hutchings for the purpose of finding the names quicker than he could; he couldn't seemingly attend to his business of putting the votes in and finding the names quick enough, and Hutchings took the book and would sing out that they were all right. At that time, when I found that going on, I thought it was not right. I always showed the name upon my registry to Mr. Jenny, so that he might decide whether it was right; Mr. Jenny had his ballot, and Connolly says, "You damned old fool," says he, "let me have that, I will distribute that," snatching the ticket out of his hand. Mr. Jenny told me to take cognizance of that, and I kept my eye on him, and didn't think his action was all right; yet I wouldn't be positive that he did change the ballots.

And as to the threats used by Connolly toward Jenny, as follows:

He buttoned up his coat and said he was bound to have order; Connolly put his fin-



ger to his nose, like that, (illustrating) and said, "Do you think, you old foggy"—using similar language to that which he used before—"that you are going to come that over me? You can't do it," he says. He made an attempt to take hold of Jenny, and Jenny buttoned up his coat and said, "I might as well die in defense of the ballot-box as anywhere else; it is a good place to die," he says.

The witness, though not a resident of the district, was appointed by the other canvassers to act with them, and did without further appointment or qualification. His account of the manner of his appointment is as follows:

The person who was appointed to act as canvasser did not appear, and in half an hour after the closing of the polls the crowd was impatient, cheering and shouting for McClellan and Brooks, and hooting and calling me a blind son of a bitch, and all such language as that; that I was trying to get away myself, and Mr. Jenny was determined to stand by the boxes until the board of canvassers took charge of them. Lynch finally suggested that I should be appointed to fill the vacancy.

Q. Who composed your board as finally constituted?—A. John Connolly, John Lyst, and myself.

He then testifies that in the canvass he found two votes, one wrapped inside of the other, in some cases, and thinks they were for the sitting member; and in attempting to tear one of them up, he was interfered with by Connolly, who told him, "I am chairman of the board of canvassers; all you have got to do is to stand by and look on." That he did, however, tear up one, but Connolly afterwards put the parts together, and counted the ballot with the rest; and as to other disorderly proceedings he testified as follows:

They took the pile of tickets I had two or three times, and said they would relieve me of all labor—would not allow me to handle them at all, and Mr. Connolly counted them; Mr. Connolly told me to go out and get some oysters for them. Once I told him I didn't think it was right, although I was in the minority; he finally got a little more friendly. Once in a while, when I got a pile of tickets I wanted to look over prior to handing them to him; Lyst would put out his hand and take them from me, doing it in a half pleasant way, but a little ugly at the same time.

Q. In the presidential tickets were there any irregularities?—A. Yes; this written ticket was counted the same as one of the others. I spoke of the objection made during the day by Mr. Jenny: he said that the canvassers wouldn't allow that. It was counted the same as the others.

Q. Did the canvassers sign the tally-books?—A. The tally-books were signed before the counts were made out.

Q. How did that happen?—A. About 4 o'clock in the morning all the votes were counted, and there was some little feeling that they were not altogether right; when all the papers were collected there were some—if I remember right—I am quite sure—I will treat on it—we had twenty-three ballots that came from soldiers; we had those, as we had to send those to the supervisors—counting up those ballots, and looking over our papers after we had signed the book—allowing the clerks to make up the list, we each of us took a copy of the votes counted, and it was understood—Mr. Connolly proposed—that the clerks would take the tallies home and make out the books from that. After we had had some words upon it, there came in Mr. Beard, Mr. Cowen, Mr. Owens, and I believe a man named Kelly, and asked us how we got along. This was after we had decided that our business was done. We had signed the books in blank and left them to the poll-clerks to fill out; and they came in to ask how it was. They wanted to know if our tallies and other counts balanced. They did not balance, for the reason that the poll-list and the soldiers' votes, and the returns for the different candidates, all didn't make the proper total, and Mr. Beard, he took a pencil and some paper and commenced to show them how to finish up the books by the poll-list; and the books were passed freely around the room, so that a number of persons could examine them. I was all alone—not a single person there with me. The police did not interfere so long as no person had been struck. They said they could not, so long as there was no breach of the peace. I asked the chairman to excuse me—I would not be a party to anything of the kind—and I requested officer Feagan to accompany me home from the station-house. The captain ordered him to see me home. I was told the next morning that it was half-past six in the morning when they got through, and that they regulated all the books; and on looking over the poll-list afterwards, I see they did regulate.

Q. Do you swear that at the time you left on account of the interference of these strangers, your tally did not correspond with the poll-list?—A. No, sir; none of the poll-lists corresponded—not one of the tallies held by the two clerks. They didn't foot



up the same. The poll-list and other papers didn't foot up the same, for the reason that there were twenty-three soldiers' votes; the poll-list only shows six at present.

In reply to this testimony the sitting member produced the depositions of Connolly and of the other canvasser, Lyst. Their testimony will be found in Mis. Doc. No. 7, Part 2, at pages 107 and 151, and the attention of the House is called particularly to this testimony. They contradict the two witnesses offered by the contestant as to all the essential matters relied on in their testimony, and both are particular in their contradiction of Hargin as to what transpired during the canvass.

The conclusion from this testimony will depend, in the mind of each member, upon the credibility given to the testimony of the witnesses on the one side and the other.

The committee are not satisfied by proof, beyond any reasonable and fair doubt, that any actual fraud was committed upon the ballot-box during the day of election, and that the conduct of the officers of election and men about the polls, testified to, should subject them to indictment for misdemeanor, rather than the box itself to rejection. The fraud upon the canvass during the night after election, as testified to by Hargin, if fully substantiated by reliable testimony, would require that the return made by such officers and in such manner should be set aside; but the testimony of Hargin, upon which this charge mainly rests, is so shaken by his own appearance as a witness, and the direct contradiction of Connolly and Lyst, that it would be altogether unsafe to base any judgment upon it. The committee, therefore, find that the allegations against this district by the contestant have not been sustained.

### THIRD DISTRICT OF THE TWENTY-FIRST WARD.

Against this district the contestant alleges :

That in the third district of the Twenty-first ward one hundred and eighty-eight votes were cast for me, one hundred and thirty-seven for you, and two-hundred and six for Thomas J. Barr; but that, through the fraud or negligence of the canvassers, the votes correctly counted were incorrectly credited and entered upon one of the returns; that the other correct return was lost from the office of the county clerk; that under threats and intimidations on the part of your agents, and a writ of mandamus issued on motion of your attorney, after the board of county canvassers had been already a week session, the board of canvassers for the district was forced to sign, and file a return with the county clerk, the duplicate copy of that in the hands of the supervisors of the county.

The committee were of opinion that this allegation permitted only of proof that there was error in the return, and that under it the contestant could only show that he received more, or the sitting member received less, votes than had been returned for either. The whole vote in the district was as follows : Barr, 206; Brooks, 188; Dodge, 137. The vote for presidential electors upon the same ticket with Mr. Dodge was 164; and the contestant called the attention of the committee to the fact that, while he ran ahead of his ticket in every other district in the ward, fourteen in number, he was returned as receiving behind his ticket in this district 27 votes; and that while he had large interests and influential friends among his political opponents, which led him to expect an opposite result. Several witnesses testified that he drew to his support in this district large accessions from his political opponents.

The polls were held at the liquor shop of one Fitzsimmons, whose character was represented by many of the witnesses to be that of a violent and unscrupulous partisan, a fighter, engaged in the notorious July riots, violently interfering with the polls during the day, and the canvass at night, selling and distributing liquor in his shop, where the elec-



tion and canvass were held, in violation of law, and boasting the next day of substituting votes from his pocket for votes in the ballot-box. In consequence of the free use of liquor one of the inspectors, who was also a canvasser, became drugged, and fell asleep before the canvass was completed. The tallies kept by the canvassers were lost. Under these circumstances the contestant canvassed the district, and produced a large number of witnesses who testified that they voted for him. He claimed before the committee that he had so proved one hundred and fifty-nine votes, while only one hundred and thirty-seven had been returned for him. It was further contended that the committee could properly infer that a larger number than this even had voted for contestant, from the obvious impossibility of finding, in a district situated in the heart of a city like New York, four months after an election, every voter who had cast his vote for a given candidate. But however probable such an inference, it could not be safely made the basis of a judgment which should rest upon evidence, not probability. From a careful examination of the testimony offered to prove for whom voters cast their votes, it appears that several of the one hundred and fifty-nine claimed by the contestant to be proved to have cast their votes for him, thirteen at least are so proved only by proving the statements of the voter made to third persons, not at the time he cast his vote, but about the time the deposition was taken, which was four months after the election. The committee are of opinion that no precedent can be found for receiving such testimony, and they decline to recommend one. This reduces the discrepancy between the return and the number proved to nine votes, admitting that there can be no doubt as to the proof in relation to the vote of each one of the remaining one hundred and forty-six. The committee do not deem it safe under all the circumstances of this case, including the uncertain character of some of the testimony offered, and the liability to mistake after so long a time had transpired since the election before taking the testimony, to disturb the return by adding these nine votes.

As has already been stated, the testimony was confined to the four precincts which have been considered in the order treated in this report. The committee therefore submit the result of the whole case as follows :

The official return for Mr. Brooks was.....	8, 583
Deduct illegal return from 15th district, 18th ward.....	221
Deduct illegal return from 7th district, 21st ward.....	160
	<hr/> 381

Whole number of legal votes cast for Mr. Brooks.....	8, 202
The official return for Mr. Dodge was.....	8, 435
Deduct illegal return from 15th district, 18th ward....	57
Deduct illegal return from 7th district, 21st ward....	71
	<hr/> 128
	<hr/> 8, 307

Majority for Mr. Dodge.....	105
-----------------------------	-----

If, however, it shall be deemed by the House a safer precedent, and more in accordance with justice, to reject from the return from the seventh district in the Twenty-first ward only the thirty illegal votes proved to have been cast for the sitting member, leaving the return otherwise as it was made, notwithstanding the presence in it of eighty-



six votes believed to be fraudulent, though for whom cast it is not known, the result would still show a majority for Mr. Dodge, as follows:

The official return for Mr. Brooks.....	8, 583	
Deduct illegal return from 15th district, 18th ward.....	221	
Deduct illegal votes cast for him in 7th district, 21st ward..	30	
	<hr/>	251
		8, 332
Official return for Mr. Dodge.....	8, 435	
Deduct illegal return from 15th district, 18th ward.....	57	
	<hr/>	8, 378
Majority for Dodge.....		<hr/> <hr/> 46

Even if the return from the seventh district, Twenty-first ward be retained altogether, notwithstanding the accumulated evidence of the fraudulent votes it contains, still the conclusion would not be changed, but the result would be as follows:

Official return for Mr. Brooks.....	8, 583	
Deduct illegal return from 15th district, 18th ward.....	221	
	<hr/>	8, 362
Official return for Mr. Dodge.....	8, 435	
Deduct illegal return from 15th district, 18th ward.....	57	
	<hr/>	8, 378
Majority for Dodge.....		<hr/> <hr/> 16

The committee entertain no doubt, therefore, that the majority of all the legal votes cast in the district were cast for Mr. Dodge, and in this finding they have deducted from his poll every vote about which, in their judgment, there was reasonable ground for doubt, giving the sitting member, who holds the certificate, the benefit of all the doubts that rested upon their minds after the most patient and careful examination and deliberation. In accordance with this judgment, they recommend the adoption of the following resolutions:

*Resolved*, That the Hon. James Brooks is not entitled to a seat in this House as a representative in the thirty-ninth Congress from the eighth district in New York.

*Resolved*, That William E. Dodge is entitled to a seat in this House as a representative in the thirty-ninth Congress from the eighth district in New York.

---

#### MINORITY REPORT.

Mr. Marshall, from the Committee of Elections, presented the following views of the minority:

The undersigned are unable to concur in the conclusion arrived at by the majority of the committee. We feel confident, from an examination of the evidence, that Mr. Brooks was duly elected as a representative in the present Congress, and is entitled to retain the seat he now holds.



It will not be denied that the sitting member, having obtained the proper return and certificate of election, is *prima facie* entitled to retain the seat, and that the burden of proof is thrown upon the contestant to show, by clear preponderance of testimony, that he received a majority of the legal votes cast, and is for that cause entitled to be received and recognized as the duly elected member of his district. On no other ground, on any recognized principles of law or equity, would this House be justified in expelling a member duly returned as elected and giving his seat to the party contesting.

With all due respect to the majority of the committee, we respectfully ask that the members of this House will examine the evidence for themselves; and we feel great confidence in making the assertion that this evidence not only fails to show that Mr. Dodge, the contestant, is entitled to the seat, but that it shows most conclusively that he has no honest or just claim thereto. On the contrary, we assert that if Mr. Dodge had been duly returned as elected, it would be the duty of the House, upon the evidence laid before it in vindication of the purity of elections and of its own character and honor, to turn him out without hesitation, and send him back to his home branded with the most emphatic condemnation of the House. To give a man a seat here by a vote of this body who, by the most lavish and shameless use of money, has endeavored to defeat a fair and honest expression of the electors of his district, and to corrupt the very fountains of the elective system, would fix a stain upon the House itself which neither time nor repentance could easily eradicate.

It is proper here to remark that the evidence in the case is very voluminous, and with the briefs filed make up about one thousand pages of printed matter. The evidence is contained in two volumes, (Miscellaneous Doc. No. 7, parts 1 and 2;) the first containing the evidence on the part of Mr. Dodge, and the second the evidence taken by Mr. Brooks. The first is referred to in this report as D and the second as B.

The irregularities charged, if they existed, are not shown to have been produced by the procurement or connivance of Mr. Brooks, or to have inured in any way to his benefit. In all the districts assailed by the contestant, a clear majority of the officers of the election (including registers and inspectors) were his own party friends, while none of them are shown to have been the personal or partisan friends of Mr. Brooks. In all the vast array of evidence there is no proof whatever that illegal votes were given or returned for the sitting member. Vast sums of money were used in the most shameless and scandalous manner to control the election by direct and indirect bribery; but this was done by the contestant or his friends, and not by Mr. Brooks. There is no attempt, by proof, to show any wrong or fraud on the part of the sitting member. There is no pretence that Mr. Dodge could under any possible circumstances obtain a majority of the votes of the district he claims to represent. It is, indeed, *admitted* that he would, upon a fair vote, fall short of a majority by several thousand votes. If, under all these circumstances, this House gives him the seat he claims, it will only prove, as we think, that we are living in the most extraordinary times, where the ordinary results cannot be relied upon from any stated premises. We repeat that, if there were irregularities, they were not produced by the connivance or procurement of Mr. Brooks. If there were frauds and bribery, they are chargeable exclusively to Mr. Dodge and his agents; and the principle is too well settled that a man can in no case take advantage of his own wrong, and that in all cases a party asking relief must be able to come into court with clean hands.



## SEVENTH DISTRICT, TWENTY-FIRST WARD.

The allegation here is, (D 3, specification 10:)

That *sundry persons* voted for Mr. Brooks who were not legal voters or residents in the district, viz., one hundred and upward.

The act of Congress (1st section, statute of 1851) regulating notice as to the contest of election, reads, in conclusion, thus:

And in such notice shall specify *particularly* the grounds upon which he, the contestant, relies in the contest.

The sitting member at the start protested against the illegality of such a notice, (B 2,) and argued throughout that its *generality* was not only in violation of the statute, but of such a nature that it could not be traversed, save by a denial as "*sundry*" broad as the *sundries* alleged; thus substituting in lieu of a plea "a stump speech on both sides." The object of the act of Congress forbidding such *sundry* generalities, and prescribing therefor a *particularity*, was to prevent a surprise upon the sitting member, (Leib's case, C. T. E., p. 165,) and *not* to give uneasiness to a sitting member upon slight grounds, (Varnum's case, C. T. E., p. 272.) Courts acting upon contested elections require the parties complaining to *specify*, because otherwise they would be converted into a mere election board, (Littell vs. Robbins, C. T. E., Bartlett, 138.) It is obvious that in a contested case like this, where the contestant is a man of immense wealth, who it is proven has lavished large sums illegally upon the election, a sitting member, unless equally wealthy, has no chance of meeting him in a contest, if, *after* the election, the election can be gone over again under some of the forms and protection of the State law, under the pretence of such a "*sundry*" notice as to *sundry persons*, "one hundred and upward." The Committee of Elections, and through their chairman, Mr. Dawes, (Kline vs. Verre, Bartlett, p. 383,) is emphatically committed not only against these *generalities*, but against this particular word "*sundries*," in the notice. The chairman there remarked:

The common law pleading, "you did, and I didn't," would have every element of "particularity" in it which is contained in such a specification. The only precedent under existing laws approaching this in vagueness and generality, which has come under the notice of the committee, is that of Vallandigham vs. Campbell. But there is this to distinguish that from the present one. In that case the sitting member took no exception to the notice of contest for want of particularity when served upon him, as in his reply thereto; but, on the other hand, filed his own answer in the same general terms. \* \* \* \* Whatever might have been the opinion of that Congress as to the sufficiency of these specifications, it might well have been held in that case, indeed it could not have been held otherwise, that any such defect in specification or answer had been waived by the parties. But in the present case (Brooks?) there could be no waiver. The exception to the sufficiency of the notice was taken at the earliest practicable moment (by Brooks,) (and) *it was also renewed at the taking of the testimony, and at every stage of the hearing.*

The whole reasoning of the chairman of the committee, and all his legal citations, (p. 384,) go to show that such a "*sundry*" allegation as this is in utter violation of the statute, while they earnestly put the contestant upon guard in a solemn warning.

"The committee," says the chairman, "have not felt at liberty to pass over this entire disregard of well-settled rules and statute enactments without notice, *lest proceedings like these should grow into PRECEDENTS*, and parties to contest should hereafter meet committees, not for the purpose of trying prepared and definite issues, but for the purpose of making vague and uncertain complaints, and indulging in endless and unsatisfactory discussions."

The majority of the committee now propose to disfranchise, under the "*sundry*" notice, the whole district where the official result was thus declared:

Brooks ..... 160



Barr .....	158
Dodge .....	71

though the contestant, in his preliminary brief of things proven, expressed an apparent satisfaction if but thirty votes were thrown out!

"I claim to have proven," said that brief, "that the registry, poll, and canvass of the seventh district of the twenty-first ward were so tainted with illegality and fraud that the will of the legal voters thereof cannot be ascertained, and the official returns must be rejected; or, if not rejected, that your official poll of that district must be diminished by thirty illegal votes, so proven by me."

The majority of the committee have not listened to the suggestion of only 30, but would disfranchise 389 voters in all.

It is admitted, in this district, that the registration and reception of the votes were by political friends of the contestant. The board of registration and of inspection stood thus:

*Registers.*—Two republicans, one democrat.

*Inspectors.*—Two republicans, one democrat.

The registry clerk was a republican. All these officers were sworn officers, and there is no allegation or proof to the contrary. The two republican registers, Taylor and Pendrall, were *not* called by the contestant, as witnesses, to impeach the registry, while the democrat register swears "*there was no irregular or improper conduct—the register united in the certificate we ALL SIGNED.*" Nor were the two republican inspectors of the election brought up as witnesses by the contestant, though it was fully in his power, while the sitting member brought up the democrat inspector (Farrell) to swear "*everything was done according to law.*" The republican poll clerk (Beekman) swears "*he was there all day, and that the election was conducted in order, and that he did not see anything out of the way.*" (B 303.)

Now, here is an election where 389 voters—(500 or 600 on the registry)—(B 228)—are thrown out, though verified, and sworn to, by four republican officers and two democrats—the republicans having the control and government of the votes in this ratio of two to one! It is needless to say that the sworn officers of an election, regularly and legally appointed, cannot be thus *perjured* but by the most overwhelming testimony. The whole burden of proof is on the contestant that all his political friends and enemies were perjurers. There was no allegation in the notice that they were perjured, or *to be* proven to be perjured; but, on the contrary, constant use was made of one of these officers (Warren S. Taylor) as a drummer, or runner, in this contest, active and energetic for the contestant, Mr. Dodge. (D 117, 128.)

The only attempt made to fasten this "perjury" upon the officers of the election comes from two persons: the first, an outlaw by the name of Stephen Geoghegan; and the next, a man named Russel Myers, *alias* "Butch" Myers, a so-called "government detective" or spy, who, in order to show voters did not live in the district, inquired, when the draft for the war was pending, mainly among the women—the wives, sisters, or daughters of the husbands, brothers, or fathers to be drafted! Well known among those whom he was spying, both in his antecedents and presents, of course he could get no information if in honest pursuit of it; while the proof is, that he purposely ignored the existence of some of the most prominent men in the district, such as Colonel Austin, (B., 238,) and of soldiers who gallantly fought in our army; one of them (Kelly, B., 293) pronouncing him a "perjurer." Names entered upon the poll list such as *McLarney*, he insisted upon finding, though *McAlarney* was the real name. The sitting member has furnished a most laborious and careful analysis of every name which Myers alleges to



be "unknown" or "unfound" save five, in a list of one hundred and nine; thus:

On Myers's list .....	109
Accounted for, as proven by the sitting member .....	104
Leaving only .....	5

which is wonderful, considering that the search was made months and months after the election.

The other witness to disfranchise this district is Stephen Geoghegan, an outlaw by his evidence, (D., 449,) utterly unworthy of the least attention, save what the report of the majority may attach to it. Geoghegan is pronounced by the contestant, Mr. Dodge (B., 147) to have a character "desperate," "unscrupulous," and "sunk," and is shown to be (B., 283) a "bruiser," a "rough," "that no respectable man would have anything to do with." Mr. Phelps, the counsel for Mr. Dodge, before Judge Brady, (the sitting judge before whom this evidence was taken,) swears (D 493:)

If Geoghegan had not acted in *our interests*, I should think it were right that he should be indicted and punished.

John M. Tracy, in detail, (B., 235,) disposes of all Geoghegan's testimony. The sitting member in his brief (pp. 17, 18, 19, 20, 21, 22, 23) has set name against name and confuted every word Geoghegan or Myers uttered as to the votes for "dead men," "substitutes," or "fraudulent names." Tracy was deprived of the power of adding to his testimony at midnight, when by law the time for taking testimony closed, though Brooks begged for this additional time, which Dodge refused. (B., 318.)

This seventh district, Twenty-first ward, is on the East River, and is a district mainly made up of blasters, or boatmen, or workmen, and in order to verify the truth and accuracy of the vote, the sitting member thus contrasted it with the three Fifth avenue districts, the richer districts on the other side of the ward.

CONTRAST OF VOTES IN THE DEMOCRATIC AND THE REPUBLICAN DISTRICTS.

7th (this dem., called Dutch Hill) district.				12th (Fifth avenue, rep.) district.			
1864.		1865.		1864.		1865.	
Brooks .....	160	Slocum, (dem.)....	221	Brooks .....	155	Slocum, (dem.)....	122
Barr .....	158	Barlow, (rep.) ....	68	Barr .....	28	Barlow, (rep.) ....	168
Dodge.....	71			Dodge.....	310		
		Total.....	289			Total.....	290
Total... 389				Total... 493			
	289				290		
Falling off..	100 from 1864 to 1865.			Falling off..	203 from 1864 to 1865.		

TWO MORE FIFTH AVENUE DISTRICTS.

13th district, (Fifth avenue,) 21st ward.				14th (Fifth avenue) district.			
1864.		1865.		1864.		1865.	
Brooks .....	134	Slocum, (dem.)....	141	Brooks .....	135	Slocum, (dem.)....	142
Barr .....	27	Barlow, (rep.) ....	289	Barr .....	26	Barlow, (rep.) ....	216
Dodge.....	394			Dodge.....	330		
		Total.....	430			Total.....	358
Total... 555				Total... 491			
	430				358		
Falling off..	125 from 1864 to 1865.			Falling off..	133 from 1864 to 1865.		



## ANOTHER CONTRAST.

<i>Vote of 1864.</i>		<i>New revised registry—1865.</i>	
Seventh (dem.) district .....	389	Seventh (dem.) district.....	367
Twelfth (rep.) district .....	493	Twelfth (rep.) district.....	337

Thus demonstrating that, so far as we can judge by analysis and comparison of the poll of 1865 for State officers with the poll of 1864 for Congress, the seventh (Dutch Hill) district was an honester and juster poll than the three Fifth avenue wealthy districts.

The minority of the committee, under this statement of facts, cannot well imagine a greater injustice than the disfranchisement of these 389 voters; while richer districts, in a worse apparent position, are allowed their full vote, especially the thirteenth, which the sitting member contests upon the specified ground of abandonment by the canvassers of the ballot-boxes pending the canvass. To do this is substantially to say *labor and poverty must not vote, and capital and property alone shall elect members of Congress.*

But is it possible that lawyers, in the House or on the committee, can accept as legal testimony such *indirect* witnesses as Geoghegan and Myers as to the fact whether or not some voter lived on *this* side of the street or *that*, *this* number or *that*, when the voter himself could have been called as a witness, or some party professing to know, or that some Stév. Geoghegan (D., 409,) should swear away, through Myers, the existence of this man or that without any effort save through this Myers to find the missing man?

All of Myers's testimony, or nearly all, is of this character. Even Geoghegan disproves Myers, (Frank Bradley, D., 242,) while Tracy throughout cuts up his testimony, root and branch. Pronounced "a perjurer" by Kelly and another, (B., 293, 294,) is not the legal maxim applicable to Myers throughout—*Falsus in uno, falsus in omnibus?* When Myers got his information from women and children, (D., 402,) "women entirely," no effort was made to bring up the women! Not one was notified and summoned to appear! Is it possible that an old member of Congress, in a district which is anti-republican by thousands, can thus be *sworn off* from the floor of the House, not even by women and children in their own persons, but through Myers or Geoghegan, as one or the other distils his information for the committee of Congress through his own crucible or still? Why were not the women and children themselves brought up in lieu of Myers and Geoghegan? Such "hearsay" evidence is of the most objectionable and weakest character.

## FIFTEENTH DISTRICT, EIGHTEENTH WARD.

The twelfth allegation of the contestant is—

That the fifteenth district was *not* legally created and established, (with a general averment of frauds.)

But not *specifying* the fifteenth district of the Eighteenth ward, and thus leaving the sitting member to guess *that* was the district meant. In all the other allegations of the contestant *the ward* where the *district* is contested is specified. Objection was taken to this at the start, (B., 3,) and persisted in throughout, and the sitting member did not know what district was meant till contestant, a very few days before the closing of the testimony, disclosed what he meant.

The allegation further is—not what the majority of the committee give the contestant, the disfranchisement of the whole district—but—

That of these votes there cast *for you*, ONE-THIRD and upward were given by persons not qualified to vote.



The vote stood—

Brooks .....	221
Barr .....	168
Dodge .....	57
Total.....	446

The majority of the committee throw out 446 votes, when the contestant *specifies* in his claim that only “one-third and upward” of the Brooks votes, viz, 74, or about 74. The contestant thus is happy in having a better case made out for him than he made out for himself in his pleadings, for the whole district is disfranchised by one fell swoop! 446 men are annihilated at once, where the victor claims, “killed and wounded,” only 72 and upward!

This district is an East River district, where the great gas-works of New York are located, (D., 214; B., 124;) a sort of promontory projecting into the East River, and surrounded on two sides by water, where schooners, sloops, barges, and water-craft of all kinds abound, full of men whose real habitations are in their boats. A district like this, full of workingmen, naturally changeable in the residences of its voters, was pounced upon by the contestant to disfranchise, (only *in part*, however,) and a person was “secured” (D., 501) by the name of Las Casas Dean, who starts doubts of his own sincerity by swearing (D., 502)—

That deponent is a man of religious principle.

The result of Dean’s being thus “regularly secured” (D., 502,) and paid (D., 502,) was that in a district of 446 votes he alleged he found—

Non-residents .....	163
Vacant lots .....	44
Dead.....	3
Total.....	210

While the majority of the committee find, or seem to find, 446—the whole number of non-residents, or on vacant lots, or dead! Dean’s six weeks’ hunt, under pay, kills off in the district only 210, while the committee *dispatch* 446! The contestant’s start of one-third and upward, 74, Dean increased to 210, while the committee, more happy in discovery than either Mr. Dodge himself or Mr. Dean, make out a far better case for the contestant than he or his *employé* made out for themselves!

This Las Casas Dean, it is in evidence, was never “noticed,” as the act of Congress requires, to appear before the examining judge, Brady, (D., 365.) His testimony comes all through Mr. Phelps, the counsel for Mr. Dodge, before the contestant, and is all “hearsay.” Dean *tells* Phelps, and Phelps swears Dean *told* him, and Dean swears he (Dean) *was told*, even “by the children” in the district, (D., 502,) that these children did not know some of the voters. The evidence thus comes to us through three or four sieves: 1st, women and children and others in the district; 2d, Dean; 3d, Phelps; and none of them could be even examined by the sitting member, for Phelps knew nothing but what Dean told him, and Dean knew nothing but what others told him. None of the *original* sources of testimony, the real live people in the district, or the women or the children, were summoned or subpoenaed as witnesses! Mrs. Boyle, Mrs. Patrick Sullivan, and Mrs. Finnerty (D., 504) *told* Dean some things; but none of these *mesdames* were summoned as witnesses, none of the children even ever turned up to



attempt to make something of this very novel and more extraordinary mode of *extinguishing* 446 votes in one of the populous districts of New York. Mr. Phelps, the counsel for Mr. Dodge, after carefully keeping Dean and his affidavit in the background till the night of March 29, 1865, (the time for taking all testimony then closing, April 3, in four days only,) *then* offered to put him (Dean) upon the stand! The ingenuity of the counsel was superb! The legal time for giving notice had expired, and four days only were left for Brooks to hand in his testimony, while Dean was furnishing him with a list of two hundred and ten names to employ his whole time! Brooks had two thousand witnesses then to examine, and desired to poll the whole district, (see names, B, 6, 7, 8, 9, 10, 11, 12, 13, and 318;) and the ingenious counsel having then *demonstrated* against every district that had gone for Brooks in his seventeen allegations, (D., 4,) would divert him from defense of them all by this sudden raid upon this fifteenth! Against this system of guerilla tactics Mr. Anthon, counsel for Mr. Brooks, protested (D., 365) as an evident means of fraud on the part of the contestant. The whole of this *hearsay*, illegal proceeding is unmatched in the chicanery of contested elections. The testimony, the affidavit of Dean, is not legally, then, worth the paper it is written on. (1 Greenleaf on Evidence; Chief Justice Marshall, 7 Cranch, *et passim*.) But, nevertheless, the sitting member in his brief has carefully and most laboriously analyzed and investigated this test of Las Casas Dean's two hundred and ten names, and, wonderful to say, he has been able, some eighteen months after the election, to show one hundred and eighty-nine of them as *proven* to be living human beings, in actual residences, or as not in any way *disproven* by the affidavit of Dean. (See brief, 38.) Such a trace of voters in a laboring city district, after such a lapse of time, is unparalleled in the searches for voters in contested elections.

It cannot be, then, that the majority of the committee rely upon the affidavit of Dean's two hundred and ten names to disfranchise four hundred and forty-six voters! Upon what, then, do they rely?

The officers of the election were republican, two to one, thus:

*Registers*.—Two republicans, one democrat.

*Inspectors*.—Two republicans, one democrat.

This fact is admitted by the chairman of the committee, and is proven, (D., 211; B., 82.) And here it may be remarked that it is an admitted fact that in all the odd districts, such as this, the fifteenth, (and the seventh of the Twenty-first ward,) the registers and inspectors of election stand as two republican to one democrat; while it is shown by Hardy and Ely (B., 259, 260, 181, 182) that Brooks, not acting in either the republican or democratic organizations, had not a single officer of election appointed as friendly to him. These officers were equally divided among the Tammany Hall democrats and the republicans, organizations both unfriendly to Brooks. Hence, what chance of fraud for Brooks? Or why disfranchise all his 221 voters, when it is attempted to prove no fraud that may not have been a Dodge or a Barr as well as a Brooks fraud?

It was attempted, however, and for the first time, in committee, to establish as fact that the registers did not reside in the particular election district of the fifteenth, while it is admitted they reside in the election assembly district. It is not proven specifically that all do not reside in the particular election district, nor is it alleged in the specification, (D., 3,) where the allegations are very broad. It is averred also that the clerk was "not sworn nor appointed." But it is not averred or specified, as the act of Congress requires, if such were to be made an



issue, that the register did not reside in the particular fifteenth election district. Hence, under that act of Congress, no such issue can be made at this late day, and no such issue was ever presented to the sitting member to traverse.

No greater injustice (a sense of comity to the committee alone forbids us to say no greater outrage) could be committed than throwing out 221 Brooks voters only because of an alleged informality in the appointment of registers *in and over* a thorough democratic district, these registers being republican, and their appointment being made by a republican party organization. Decency, honor, and every just impulse forbid us to say republican registers were purposely appointed by the republican party, residents out of the fifteenth district, deliberately to disfranchise the district. No such conspiracy against the rights of man ever entered the heads of the republican supervisors of New York, who appointed them. The discovery of the mode of disfranchisement was not even made by the eager contestant in his seventeen counts of allegation. The invention was due to the refreshing, suggesting, and inspiring air of Washington.

But fortunately the law and the decisions of the courts of law in New York, and of the court of appeals there, forbid the contestant to avail himself of such an alleged informality. The statute, it is true, requires the registers "to be residents and voters in the district in which they are appointed," but in what district? The election *assembly* district, not *the* particular fifteenth district of the Eighteenth ward. The statute creates a board to be known—

As the board of registry for the election district in which they are appointed.

But avoids the use of the word "*election*" in adding:

To be residents and voters in the district in which they are appointed.

It is believed to have been the popular construction of the law, and practice under it, to select registers from the assembly district, and not from the particular election district, leaving both parties to pick out their keenest men in the whole assembly district to act as inspectors of registry. It is not in *direct* evidence—the question of residence or non-residence of the registers not having been raised in the specification of the contestant—that in several of the Dodge election districts two to one of the registers were *not* residents of the district, which in all gave him 1,500 or more votes, but it is, in the indirect evidence of the official report (1864, vol. 2) of the board of supervisors, where the names of all the registers are given, and in the New York Directory, that two to one of the registers that created the registration, in some of these districts, were *not* actual residents in them, though residents of the assembly election district. All these facts might, and probably would, have been shown in the evidence, if the question of residence had been raised in the pleadings of the contestant.

That such was the *custom*, and the popular construction of the act, is obvious from the subsequent explanatory statute of 1865 (chapter 740, p. 1463) recognizing and adopting the custom. The act is as follows:

No person shall be eligible to be, nor shall he be, appointed inspector of registry and elections, or canvasser for any election district of the city and county of New York or city of Brooklyn, unless he shall be a qualified voter within the *assembly* district in which such election district is situated, and liable to any duty in courts of record therein, nor unless he can read, write, and speak the English language understandingly; but such person shall *not* be required to be a resident or voter in the election district for which he shall be appointed.

This law was probably enacted to remove all doubts as to the construction of the old act, and to add statute sanction to the common cus-



tom. All the registers of this, the fifteenth district, were residents of the assembly district, and acted *de facto* in good faith under the law, or, if not under all the *forms* of the law, under the color of the law, and their action was accepted and ratified without comment or cavil by the city board of canvassers, the State board, upon all the tickets, electoral, gubernatorial, judicial, assembly, sheriff, county clerk, &c. No keen eye but that of the contestant, and his only when illuminated in Washington, ever before then detected any flaw.

But admitting all that is claimed in regard to the proper construction of the statute of New York, it is but directory, and a departure from its provision does not vitiate the election. The leading case on this question, *The People vs. Cook*, (4 Seldon R., p. 84,) with the authorities there cited, settles this question conclusively. It is there held that "the neglect of the inspectors to take *any oath* would not vitiate the election, although it might subject those officers to an indictment," and "that the acts of public officers, being in, by color of an election or appointment, are valid so far as the public is concerned." The whole object of the election laws is to secure as far as practicable a full and fair expression of the will of the electors. To reject the whole votes because the officers of election fail to comply with every prescribed regulation would be, as was remarked by one of the learned judges in New York, to place a higher value on the statute regulation than on the right of suffrage itself. It is further held in the same case, *People vs. Cook*, that the time prescribed for the adjournment of the poll is merely directory, and that "where the statute requires that the inspectors shall appoint two clerks who shall take the constitutional oath, this is directory." If no clerks can be procured, the inspectors must perform the duty of clerks. The election must not fail. And the failure of clerks to take the oath will not render their acts void. "The occasional interference of more inspectors than three does not prejudice the return, since the whole election was conducted by inspectors who were at least such *de facto*." "An officer *de facto* is one who comes into office by *color* of a legal appointment or election. His acts in that capacity are as valid, so far as the public is concerned, as the acts of an officer *de jure*. His title cannot be inquired into collaterally." The authorities upon this point are numerous and uniform. Guided by these principles, we feel constrained to insist that no irregularities are proven in this case that ought in the least to taint or vitiate the election or returns so as to affect the rights of the sitting member.

But as the law settles the legality of the vote in the district, so settle facts, irresistible and overwhelming. Under the new revised registry act (act of 1865) of New York the registration of voters was thoroughly reviewed and revised, and in that act the tendency was to cut off the foreign vote, supposed to be mostly democratic, by exacting the show of naturalization papers before the registry, and by other rigid demands. This new revised registry of 1865 and the vote of 1864 and 1865 demonstrate, *mathematically*, the following facts:

## A CONTRAST.

<i>Democratic—15th district, 18th ward.</i>		<i>Republican—3d district, 18th ward.</i>	
Revised registry, (1865) .....	530	Revised registry, (1865) .....	658
Vote in 1864 .....	446	Vote in 1864 .....	765
<hr/>		<hr/>	
Increase of registry over vote .....	84	Decrease of registry in 1865 from the vote of 1864 .....	107
<hr/>		<hr/>	

The 1864 registry in the *democratic district* is thus demonstrated to



have been correct by the revision of 1865, while the decrease of 107 in a single year throws great doubt over the republican district.

## ANOTHER CONTRAST.

*"Mackerelville" (so nicknamed) and Fifth avenue polls contrasted.*

<i>"Mackerelville" poll—15th district, 18th ward.</i>				<i>Fifth avenue poll—3d district, 18th ward.</i>			
1864.		1865.		1864.		1865.	
Brooks .....	221	Slocum, (dem.) ...	373	Brooks .....	192	Slocum, (dem.) ...	206
Barr .....	168	Barlow, (rep.) ....	45	Barr .....	62	Barlow, (rep.) ....	357
Dodge .....	57			Dodge .....	511		
		Total.....	428			Total.....	563
Total...	446			Total...	765		
	428				563		
Falling off..	18 in "Mackerelville."			Falling off..	202 in Fifth avenue.		

## YET ANOTHER CONTRAST.

<i>Democrat—15th district, 18th ward.</i>		<i>Republican—2d district, 18th ward.</i>	
Revised registry, (1865) .....	530	Revised registry of 1865 .....	583
Vote in 1864 .....	446	Vote in 1864 .....	739
Increase of 1865 registry over vote of 1864 .....	84	Decrease of registry in 1865 from vote of 1864 .....	156

The 1864 registry of the democratic district is here again, as in contrast with the republican district, demonstrated to be correct.

## AND YET ANOTHER CONTRAST.

*"Mackerelville" (so nicknamed) and another Fifth avenue poll.*

15th district, 18th ward.			2d district, 18th ward, on Fifth avenue.			
1864.		1865.	1864.		1865.	
Brooks .....	221	Slocum, (dem.) . . .	373	Barr ..	70	For sec'y of state:
Barr .....	168	Barlow, (rep.) ....	45	Brooks .....	199	Slocum, (dem.) ..
Dodge .....	57			Dodge .....	462	Barlow, (rep.) ...
		Total .....	428	Scattering .....	8	
Total...	446			Total....	739	Total.....
	428				509	
Falling off..	18			Falling off...	230 from 1864 to 1865.	

There is no answering such overwhelming facts as these but by declaring the two great Dodge districts to be as "fraudulent" as the Brooks district is alleged to be.

It is alleged that as this district was set off from the twelfth, its near neighbor, its vote was excessive, because the old twelfth, in 1863, gave but 496 votes; whereas in 1864 the two districts gave 863 in all. The new district, the fifteenth, as represented on the map, has a territory over three times greater than the old twelfth, and a new territory in which population was, naturally, all the while increasing, with two of its four boundary lines on navigable water, were lined with water-craft of all kinds, full of legal voters, whose only domicile, was there. It is alleged that no new buildings have been put up to hold this increase of population, but is proved (B., 126) that five hundred men are employed in the gas-works there, most of whom, doubtless, live in the vicinage; and it is proved, too, these gas-men "sometimes sleep there," entitling them to a vote there; some stone-yards have tenements in the rear occupied by families. Such new districts in great cities, as in new settlements



in the West, often have mere shanties for men to live in—up one day and down another. It is proved, too, (D., 214,) “voters came out of tenement houses in large numbers.” It is proved, too, (D., 181,) that in such like districts “a great many slept in coal-bins, that voted.” It is proved also that when the polls closed, with seven hundred names on the register, (D., 216,) the line of voters was full to vote; when, under the law, in the short days of November, the ballot-box was shut up, “a full line of voters were shut out,” (D., 216; B., 122,) six hundred votes could have been legally taken, instead of only four hundred and forty-six, and that eighty democrats were kept out, (B., 123.)

It is alleged, too, this was the headquarters of the July rioters, for which there was not one word of proof in the citation therefor, (D., pp. 119, 368, Dodge’s brief.) It is alleged that the district was not legally created, fully and officially refuted, (B., 129,) and admitted, (D., 537.) The official verification of the New York records of the common council demonstrates the legality of the creation of the district, (B., 129, 130.) It is alleged that one of the republican registers, Dougherty, “appears—then disappears forever.” It is proved (D., 224, 225) all the registers acted together; all certified, (D., 223; B., 83.) “I did not,” swears the democratic register, Cowan—and how could he, in the minority, as he was, two to one—“enter any name in the absence of Mr. Dougherty, register,” or Mr. Brady, (republican clerk,) (B., 93, 96.) “*Mr. Dougherty was present pretty much all the time, except second session,*” (B., 86.) Mr. Cowan, the democrat, was not there all the while, (D., 67.) Mr. Hall was there most all last session, (D., 67.)

*Extract from Alderman Hardy, (B., 263, 264.)*

Question. Is it not the practice to add the names of persons who do not appear in person and give their names to be registered?—Answer. Some do and some do not register such persons.

Q. What is the general practice?—A. I suppose it is to add them.

Q. Suppose that names were brought in and vouched for by persons known to the inspectors of registry as respectable inhabitants of the district; is it the practice to register them or not?—A. That is according as they can make their certificate. If they are satisfied that the persons whose names are so made known to them are voters, *they are required to add the names, that they may make a true certificate.*

Q. Do you think that an inspector of registry could properly make that certificate, if he had omitted to include the name of a person who was vouched for to him by a well-known and respectable elector of the district?—A. *I don't think he could.*

Q. I want you to state whether the inspectors of registry are generally all present during the whole of each session.—A. *Almost universally they are not.*

Q. What is the general rule that prevails in regard to taking names in the absence of inspectors of registry?—A. Where they leave one or two in attendance they generally make an arrangement *that all names shall be taken on slips of paper, and when they meet in the evening they add these names in the presence of the full board;* most of the names added are taken at the second session; as a general thing they are not added at the first session.

It is alleged that the acting clerk (Brady) in this district was not sworn. This negative is not proved. Hall (republican register) swears, (D., 219,) “I think he was sworn.” Mr. Brady was appointed by the republican register, voted for Lincoln for President, and voted against Brooks, (D., 269–67.) He swears again, (D., 271:)

I am pretty sure I did not put any on the registry list except such as I was told to put on by the inspectors of registry, or the names of persons who came in and registered themselves.

*Extract from Brady, 273.*

Question. Then you don't know the name of a person in the district who you knew was not a legal voter in the district?—Answer. No, sir.

There is no law making it imperative for the board of registry to



appoint any clerk. They may do, if they please, all the work themselves. The language of the act is, (New York election law, p. 28:)

The same board *may, if necessary*, on the day or days of the making a correction of such lists, appoint a clerk to assist them in the discharge of the duties required by this act.

May, if necessary, or may not, if not necessary! If Brady was not sworn, was he appointed? Hall, republican register, asks, (D., 220,) "An appointment is a man generally sworn, isn't it?" The presumption is that he was sworn; but, whether sworn or not, the case of *The People vs. Cook* shows that such a failure in a mere clerk or scrivener for the registers cannot disfranchise a district. The real question is, Was the registry correct? And Hall, the republican register, swears it was, though a very unwilling witness, because of his desire to serve Mr. Dodge in this contest, (D., 220.)

*Extract from Hall, (D., 222.)*

Answer. I generally came there about 4 o'clock and staid there until 9 all the time.

Question. Did you enter any names on the registry that you believed not to be names of legal voters in that district?—A. I can't tell; I can't answer that; I don't know the names of many in that district.

Q. Did you enter the name of any man knowing him not to be a legal voter in that district; any one that you knew was an illegal voter?—A. That's a question I can't answer, because I can't tell who the men were that lived in that district.

Question repeated.—A. Well, I don't think I did.

An effort is made to show that the register entered in mass a great many names, and that only one-quarter of those whose names were registered appeared personally. The laws of New York required no such personal presence to be registered. In a new district like this the law especially provides—

*Extract from New York election law, p. 23.*

In case a new election district shall be formed, the said inspectors *SHALL enter on the list* the names of such persons entitled to vote in the new election district, whose names appear upon the poll-list of the last general election held in the district, or districts, from which said new election district is formed.

The duty was imperative, to enter, without personal presence, the names of all the old voters, in the new fifteenth—three times as large a territory, as the map shows, of the old twelfth district, from which it was taken.

An attempt is then made to show that James Thompson handed in a large number of names, which he had a right to do, and to vouch for, it ever being optional with the registers to receive them or not. Thompson confirms Hall and Cowan, registers, (B., 297:)

I entered no name upon the book of registry of the district; I kept them till the board of registry met, and handed them to the registers. They set them down on the book. Persons that I knew pretty well.

And the registers did not do this hastily, but after due deliberation, (B., 297.)

An attempt is made by W. B. Chase, one of the republican inspectors, to show that his associate republican inspector, Thomas J. Hall, was not sworn in till "about an hour" after the opening of the polls, (D., 378.) This Chase figures so disgracefully in a church scene, in being the tool of the outlaw Geoghegan to introduce two Peter Funk "voters" (Coughlin and McLaughlin) upon the stage, (B., 146 and 147, and D., 379, 386, 387, 388, and D., 462, 463, 464,) that it is hard to say whether Geoghegan or himself is most to be credited. If *noscitur a sociis* is as good in law as in life, Chase is no more to be credited than Geoghegan;



but Chase was only "informed" when Briggs, the supervisor, swore Hall in! Hall himself was never summoned as a witness by the contestant. All we know of him is that he swore, the day of the election, to do his whole duty. This indefatigable Chase discovers that his democratic associate, Brennan, did not produce his "credentials." Did Chase produce his? Brennan himself was upon the stand, (D., 122,) but counsel for contestant made no question of his right, from the start, to act as such inspector. The evidence shows Brennan to have been appointed by the supervisors, and Chase must have known it from the start.

The greatest injustice was shown all day to the democratic voters in this district by the indefensible conduct of this Chase in delaying the voters. Thompson swears (B., 300) this district had a registry of over 700, polled only for congressmen, 446, (official return.) "I knew a great many whom we did not register, and who were legal voters," (B., 300.)

Question. (B., 298.) Was the entire vote of the district polled on that day?—Answer. No, sir; there were close to 400 votes lost.

Q. How many were waiting at the closing of the polls for an opportunity to vote?—A. I think there were close to 200.

Q. What do you consider would be the legal vote of the district?—A. I consider 800 or upward.

*Extract from Brennan, (B., 122.)*

Answer. Chase and Hall were republicans.

Question. Did they take the management and control of the election?—Answer. Chase was chairman of the board.

Q. How was the voting in relation to rapidity?—A. Very slow, in consequence of Mr. Chase. In the morning the polls were not opened until ten minutes after the time, in consequence of waiting for Mr. Hall; Mr. Chase proposed to wait for Hall, and I remonstrated with him, and went on myself and opened the polls.

Q. Then how did the voting proceed during the day?—A. Very slow, in consequence of the many questions asked by Mr. Chase, and a great deal of trouble he caused.

Q. Were any votes challenged that day?—A. Mr. Chase challenged many himself.

Q. Did Mr. Chase insist upon putting oaths and delaying such voters, notwithstanding he had no right by law to challenge any vote?—A. He did so.

Q. Were votes rejected that day by the inspectors?—A. Mr. Chase rejected a great many, in consequence of wrong numbers; the voters were willing to swear, if they had seen the original copy of the registry, their residences were put down right, but on the election day they were found to be wrong.

Q. And their votes were rejected?—A. Mr. Chase rejected those.

Q. How many votes were left out?—A. I should judge eighty votes, in consequence of wrong numbers.

*Extract from Brennan, (B., 126.)*

Q. You think Mr. Chase intended to delay the election?—A. Yes, sir.

Q. Why?—A. From his very action in keeping men so long and asking so many useless questions.

*Extract from Brennan, (B., 128.)*

Q. How did Mr. Chase find the names?—A. Very slowly, sir.

Q. He was chairman of the board, and kept the registry list also?—A. Yes, sir.

Q. As chairman, it was his duty to distribute the ballots to the other inspectors?—A. Yes, sir.

Q. In addition, he undertook to find the names on the registry?—A. Yes, sir. I remonstrated against his doing both, but was overruled by the other inspectors.

*Extract from Thompson, (D., 298.)*

Question. Was the entire vote of the district polled that day?—Answer. No, sir; there was close to four hundred votes lost.

Q. How many were waiting at the closing of the polls for an opportunity to vote?—A. I think there were close to two hundred.

Q. What do you consider would be the legal vote of this district?—A. I consider eight hundred or upward.



*The population of the district.—Extract from Brennan, (B., 12.)*

Question. You think there are as many as five hundred men employed in the gas-works?—Answer. I cannot swear to the number employed there. I know that in the neighborhood we have a society that numbers seven hundred, a greater portion of whom work in that district, and I judge from that.

Q. Do they all sleep in the gas-works?—A. Sometimes they work off and on, and sometimes sleep there.

Q. Do they all live in this fifteenth district?—A. All of them. I will state in relation to these gas-works, that some of the men are on in the daytime and some on in the night, and they must have residences.

See Cowden (B., 273) on tenement houses and population. Eight hundred and thirty-six tenement houses are in the Eighteenth ward. "These houses have four or five to twenty or more families in them." Fifty men, voters all, are allowed, by law, to bunk in one engine-house, (Pickett, B., 271.)

*Extract from Dimond, (B., 75.)*

Question. Have you had opportunities to form an opinion as to the increase of population in this city during the past year or two, and the effect which such increase, if there has been an increase, and the increase in rents, have had in causing people to live in closer quarters, and in more crowded apartments?—Answer. I have had the opportunity of any ordinary individual—that is, ordinarily engaged in business. I should say that the high prices of rents and other things would tend very materially to crowd people together.

Q. Has there been an increase in the price of rents?—A. Yes, sir; I have experienced that.

Q. You are a master mechanic and employ laboring men, and you hear them talk in your shop, and you know the opinions and views which prevail among them. From the observation that you have had in such ways, what is your opinion in regard to tenements being more difficult to procure than formerly, and in respect to poor people living more closely together than formerly?—A. There is a much greater demand for tenements than there has been in former years. There has not been the same amount of buildings erected to supply the ordinary demand, and it has tended very materially to crowd tenements, more particularly in consequence of the high price of rents; rents went up from forty to fifty per cent. on tenement property.

#### MONEY IN ELECTIONS—THE LAW ON BRIBERY.

The New York statutes are very explicit in forbidding the use of money in elections for anything but *printing* votes, hand-bills, and other papers, or for conveying sick, poor, and infirm voters to the polls. The entertainment even of electors is forbidden, or promise to pay for entertainment, or the furnishing of money to any person to procure attendance at the polls, or engaging to pay money to compensate persons. (1 vol. R. S., p. 144.) Nothing can be made more explicit than that statute. The fuller words of the law are (R. S., vol 1, title 7, sec. 4:)

If any person shall by BRIBERY, menace, or *other corrupt means*, or *device whatsoever*, either directly or indirectly, attempt to influence any elector of this State in giving his vote or ballot, or deter him from giving the same, or disturb or hinder him in the free exercise of the right of suffrage at any election within the State, and shall thereof be convicted, such person so offending and convicted *shall be adjudged guilty of a misdemeanor*, and be fined or imprisoned according to the discretion of the court before which such conviction shall be had, such fine in no case to exceed five hundred dollars, nor such imprisonment one year.

The sixth specification of the sitting member against the contestant is (B., 4)—

That, in violation of the law of the State, you used in the election large sums of money yourself, or your agents and friends, for bribery and frauds, and corruptly purchased votes, or voters to vote for you, or, when that could not be done, to vote for T. J. Barr.

The best proof of this is the evidence of Mr. Dodge himself and one



of his counsel in the case, Mr. Phelps. The latter gentleman, in the closest confidence of Mr. Dodge, swears:

*Extract from Phelps, Dodge's counsel, (D., 493.)*

Question. What do you know as to the expense of the election to Mr. Dodge?—Answer. Of the gross amount of the expenditure to which he was put for election purposes I have no idea, except that it was very small considering the size of the district.

Q. You have no idea what the amount was?—A. No, sir; except that I would be pretty sure that it wasn't \$15,000, and wasn't \$12,000—wasn't \$10,000; I think; I don't think it was as much as \$10,000.

Mr. Dodge himself, in his remarks before the House, upon the printing of the testimony in the case, admitted substantially his own personal expenditure to be about \$6,000. (See Congressional Globe of February 3.)

*Extract from Dodge, (B., 143.)*

Question. Can you tell me what amount of money you disbursed for your election purposes?—Answer. I can't possibly. I did not spend half as much as I expected I should.

Q. Can you give me the figures within a thousand dollars?—A. My impression, from the best data I can get at, is that it was somewhere from four to five thousand dollars in all.

Q. Is that independent of the contributions of your friends?—A. Yes, sir.

Q. Give me your best impression as to what amount of money was used by your friends for your election purposes?

In answer to which Mr. Dodge submitted the following two subscription papers, the only two in his possession:

#### EXHIBIT No. 4.

The undersigned agree to contribute the sum set opposite their respective names to aid in the election of William E. Dodge, esq., to Congress from the 8th congressional district. And we will pay the amount so contributed to John H. Sherwood, William H. Lee, and Legrand B. Cannon, as finance committee:

Marshal O. Roberts, paid J. H. S .....	\$1,000
Edward Learned, paid.....	250
A. W. Griswold, paid to J. H. S .....	100
Henry J. Stewart, Nov. 18, 1864, paid.....	250
H. & J. W. Coggil, paid W. C. ....	100
John A. Livingston, (B. H. & L. paid A. L.,) paid.....	100
David Dowes, paid .....	100
Livermore, Clews & Co., paid .....	100
Morris Ketchum, paid J. H. S .....	100
Mr. Shiffilen, paid to J. H. S .....	50
Cortland Palmer, paid to J. H. S .....	50
	<hr/>
	2,200

#### EXHIBIT No. 5.

The friends of William E. Dodge, esq., take pleasure in contributing the amount set opposite their names to aid in his election to Congress. And we will pay said sum or amount to John H. Sherwood, William H. Lee, and Legrand B. Cannon, to be used for said purpose:

John H. Sherwood, 12 East 40 st., paid .....	\$100
John J. Phelps, paid .....	100
Sackett, Belcher & Co., paid .....	100
Lee, Blin & Co., paid .....	100
George Bliss, paid .....	100
E. T. Tefft, paid .....	100
Lathrop & Luddington, paid.....	100
A. R. Eno, paid .....	100
I. & J. Stuart & Co., paid .....	100
Levi P. Morton, paid .....	100
D. Willis James, paid .....	100
Legrand B. Cannon, paid .....	100



J. N. Phelps, paid .....	\$100
Norman White, paid .....	100
Morris Ketchum, paid .....	100
Samuel B. Scheffelin, paid .....	100
O. D. F. Grant, paid .....	100
George R. D. Fant, paid .....	100
George Griswold, paid .....	100
W. W. De Forest, paid .....	100
David Hoadley and Friend, paid .....	100
U. A. Murdoch, D. G. B. C., paid .....	100
E. D. Morgan, D. G. B. C., paid .....	200
A friend .....	500
	<hr/>
	2,900
	<hr/>

The sums of money expended by Mr. Dodge himself, and known to be expended by or through him, are then admitted to be—

Mr. Dodge, personally, (see Congressional Globe) .....	\$6,000
First subscription list .....	2,220
Second subscription list .....	2,900
	<hr/>
	11,120
	<hr/>

But the sitting member shows—and which seems all to be verified by the testimony—the following expenditure:

Money paid by Dodge at Legrand Cannon's, (B., 41) .....	\$500
Bargain of Cannon, Cowden, and Dodge with Barr, (B., 40, 59, 145-6) .....	2,000
Enormous (so-called) "printing bill," (B., 46) .....	2,008
Amount Cowden received from Dodge, (B., 48) .....	3,500
Payments to the three wards, \$500 each .....	1,500
An undiscovered subscription paper from G. B. De Forrest, (B., 42) .....	500
An undiscovered subscription paper from G. B. De Forrest, (B., 42) .....	100
An undiscovered subscription paper from M. O. Roberts, (B., 42) .....	100
Paid by Cowden voluntarily, (B., 55) .....	\$150 or 200

*Two discovered subscription papers.*

Exhibit No. 4, p. 320, M. O. Roberts leading off with \$1,000 .....	2,200
Exhibit No. 5, p. 320, John H. Sherwood leading off .....	2,900
	<hr/>
Total discovered .....	15,508
	<hr/>

*Extract from Mr. Phelps, (D., 499.)*

IT WASN'T AN EXPENSIVE ELECTION AT ALL. WE WOULD HAVE MADE IT FAR MORE SO IF WE HAD ONLY KNOWN AS MUCH AS WE KNOW NOW.

*Extract from Legrand Cannon, (B., 31.)*

Question. What was said at these meetings held at the junction of Fifth avenue and Broadway on the subject of finances?—Answer. The *general tone* of it was to have SUFFICIENT MONEY TO CARRY MR. DODGE IN as the successful candidate, and TO BEAT Mr. Brooks.

The expenditures of these great sums of money by a contestant of immense wealth is astonishing to members from the rural districts. They would not only buy farm after farm in the West, homestead after homestead, but of themselves alone be "riches" to the sturdy farmer and mechanic and laborer of the country. We have never before known of such expenditures on an election, save among the wealthy landed aristocracy of England, or among London capitalists, who go down into the country to buy rotten boroughs for a seat in Parliament.

It is all something novel to country members here whose election



expenses seldom run over one or two hundred dollars, and often are but fifty dollars. We doubt whether a boroughmonger in England ever sold a people there at such a cost as Mr. Dodge and his friends paid to carry this district. No calamity could well be greater in the American people than in any way to countenance the purchase of seats in Congress by such expenditures of money. If it is not frowned upon now when first here attempted, or if this precedent of corruption and bribery be established, the happy possessors of our immense national debt will soon be buying their way into Congress and not only regulate the taxation of Congress to pay themselves, but also the rates of interest they are to be paid by the sweat and labor of the land. But there can be no two opinions in ethics or in politics on the enormity of the crime in this use of money, while the law of New York clearly and emphatically pronounces it a MISDEMEANOR, and SENTENCES the guilty party—not to a seat in the House of Representatives.

#### VIOLATION OF THE SABBATH BY CONTESTANT AND FRIENDS.

And what aggravates this MISDEMEANOR is, the specification (B., 4) that a corrupt bargain was made with the Tammany Hall candidate, T. J. Barr, against Mr. Brooks, to give him (Barr) two thousand dollars, and that bargain was made on the Sabbath day, and of which, thus made, the contestant himself became cognizant! (B., 166, 47, 54, 55, 56, 57.)

*Extract from Legrand Cannon, (B., 35.)*

After a long negotiation with Mr. Barr, we asked him how much money it required for him to man the polls, provide boxes for ticket distributors, &c., and he said an election in this district would cost about \$5,000; I think it was something of that kind. We then proposed, if it was necessary, to furnish him \$2,000—Mr. Cowdin and myself.

Question. What further was said?—Answer. Mr. Barr considered that matter for some time, thinking, he said, that it might be sufficient; he would make all the attempt he could, and we agreed to furnish that amount if it was necessary, and if he was elected we agreed to give him \$1,000 more.

*Extract from Elliott C. Cowdin, (B., 47.)*

Question. Did you pay him, Barr?—Answer. I paid him \$2,000.

Q. On that occasion?—A. Yes, sir.

Q. When he came to your store?—A. Yes, sir.

Q. In what did you pay him?—A. In bank bills.

*From Cowdin, (B., 54.)*

Q. About what time was it that Mr. Barr saw you on the day that you paid him this money?—A. I should think in the middle of the day.

Q. What time was the interview on Sunday?—A. It was after church; whether in the morning or in the evening I do not remember; if my memory serves me right, he came on Sunday about dinner-time, and I had some friends to dinner, and he said that he would come again, and he came in the evening; I think it was something like that, but I cannot remember now.

Q. Something like the evening?—A. I think in the evening.

*From Cowdin, (B., 59.)*

Q. You paid Mr. Barr \$2,000?—A. Yes.

Q. And you received from Mr. Dodge \$2,000?—A. I received just \$2,000; it so happened that it was the same amount.

Q. Was the \$2,000 received by you from Mr. Dodge for any other purpose than to reimburse you the \$2,000 you paid Mr. Barr?—A. Well, I will not say it was for that purpose directly.

Q. I ask if it was for any other purpose?—A. Not so far as I am concerned, it was not.

Mr. Cowdin denies, however, that Mr. Dodge was then cognizant of



the Sabbath-day contract. "It was a month after election before he could have known anything about it."

*Extract from Mr. Dodge's testimony, (B., 166.)*

Question. When was your last payment to Mr. Cannon on account of the election?—Answer. I didn't pay anything to Mr. Cannon, except on election day.

Q. How much was that?—A. Five thousand dollars. (Mr. Dodge said in committee this was a mistake, and should be \$500.) He returned me, after election, I think, \$360.

Q. For what purpose was that?—A. I don't know; it was some expenses for carriages—for hack-hire; he said he might want it in the course of the day.

Q. When was your last payment to Mr. Cowden?—A. I have not the date, but my impression is that it was some three or four weeks after election.

Q. And the amount?—A. IT WAS EXACTLY TWO THOUSAND DOLLARS.

Q. Was any statement made at that time for what purpose that \$2,000 was?—A. He wrote me that he had a bill to pay, and that Mr. Cannon had stated that funds had been put in my hands.

Q. Do you know whether that \$2,000 was for any special purpose?—A. *I have heard since it was to pay Mr. Barr.*

Q. Did you know that at the time?—A. I SUSPECTED IT, BUT DIDN'T KNOW IT.

It is obvious here that Mr. Dodge knew of the Barr-Cannon-Cowden Sabbath-day contract, and that his \$2,000 ratified and indorsed it. The contestant in this case, who is crying out "fraud," "fraud," against the sitting member comes before the House, then, not with clean hands as the law requires, but as guilty of a high misdemeanor under the statutes of New York, and as a breaker of the Sabbath—the Sunday statutes of New York, (see R. S., art. 8, secs. 65, 66, 67, 68, 69, 70,) as well as the statutes of most of the States of this Union, and above all, of one of the ten commandments:

Remember the Sabbath-day to keep it holy.

#### THIRTEENTH DISTRICT, TWENTY-FIRST WARD.

The sitting member moved to strike out this district in consequence of the violation of the election law by the canvassers. The vote was:

Dodge .....	394
Brooks .....	136
Barr .....	27

The law is, (vol. 1, R. S., page 130:)

As soon as the poll of an election shall have been finally closed, the inspectors of said election shall proceed to canvass the votes. Such canvass shall be public, and shall not be adjourned or *postponed* until it shall have been FINALLY completed.

The canvassers in this district were Mr. White, Mr. Baker, and Mr. Fox. D. W. Clarke, a lawyer, (B., 18,) swears that White and Baker, about 9 or 10 o'clock p. m., got up and walked over to Parker's, a liquor store, nearly opposite, where they tarried from a half to a whole hour, and no canvasser was left behind to watch the ballot-boxes. "Ballots were lying around on the table," (B., 19,) fifty in number. Mr. Clarke expressed the opinion then to Senator Connolly, his companion—

That they had no right to go away; *that it was against the law*, and that they were liable to have the district thrown out.

Frauds (adds Mr. Clark) could have been undoubtedly committed in their absence, (B., 21.)

Senator Connolly (B., 97) confirms all this testimony of Mr. Clarke. The Congress ticket, he swears, had not been counted when the canvassers left. Ignatius Fox, the third canvasser, (B., 294,) swears he went with the two other canvassers, White and Baker, to Parker's to get refreshments; "they were gone twenty minutes;" "the poll-room was



full of people;" a policeman and two or three other citizens were left within the inclosure where the ballots were. Fox thinks the congressional ticket had been counted before they went out, but no final count had been made; "simply counted in tens." A liquor store was within fifty feet of the place, where liquor was sold all day.

The law was here clearly and palpably violated by the adjournment and postponement of the canvass, while the canvassers were gone out across a broad avenue to drink and eat; and there was no security for the congressional ballot-box though counted in stacks of tens or uncounted. Because of his absence, it is alleged and specified (B., 4) that the vote was made unnaturally to count thus:

McClellan . . . . .	185
Brooks . . . . .	134
Lincoln . . . . .	376
Dodge . . . . .	394

Dodge thus 18 ahead of Abraham Lincoln, and Brooks and Barr combined 24 behind McClellan.

Now, every legal exaction which would throw out the seventh district, Twenty-first ward, or the fifteenth district, Eighteenth ward, would, *a fortiori*, throw out the thirteenth district, Twenty-first ward, because *there*, in that most critical period of an election, the law was palpably broken by the willful absence of the canvassers from the ballot-boxes, left in the custody, not only of strangers to the law, but of persons unknown. Correct the return, then, by throwing out these three districts, and the result will be thus:

	Brooks.	Dodge.
Seventh district, Twenty-first ward . . . . .	160	71
Fifteenth district, Eighteenth ward . . . . .	221	57
Thirteenth district, Twenty-first ward . . . . .	134	394
	<hr/>	<hr/>
	515	522
	<hr/>	<hr/>

Brooks's official majority is 148, from which deduct 7 votes lost in three districts thrown out, and the result would be 141 majority for Brooks.

All of which is respectfully submitted, with the following resolution:

That William E. Dodge is *not* entitled to a seat in the House as a representative in the thirty-ninth Congress from the eighth district in New York.

S. S. MARSHALL.  
WILLIAM RADFORD.



## FOLLETT vs. DELANO.

In this case the sitting member claimed that there was a defect in the notice, and was sustained in his view by the committee, but the investigation of the evidence was proceeded with.

The contestant alleged that the poll-books were defective, but it was held that, the tally-sheets being unimpeached, the stated results could not be set aside. The House agreed to report without a division.

May 14, 1866.—Mr. Dawes, from the Committee of Elections, made the following report:

*The Committee of Elections, to which were referred the memorial and accompanying documents of Charles Follett, esq., contesting the right of Hon. Columbus Delano to a seat in this House as a representative from the thirteenth congressional district in the State of Ohio, have considered the same, and submit the following report:*

The election here contested was held on the second Tuesday of October, A. D. 1864, and the official canvass resulted as follows:

	COLUMBUS DELANO.			CHARLES FOLLETT.		
	Home.	Army.	Total.	Home.	Army.	Total.
Coshocton County .....	1,645	373	2,018	2,136	34	2,170
Knox County.....	2,421	337	2,758	2,399	50	2,449
Licking County .....	2,770	339	3,109	3,485	56	3,541
Muskingum County.....	3,406	609	4,015	3,444	57	3,501
	10,242	1,658	11,900	11,464	197	11,661

Showing a majority for the sitting member of two hundred and thirty-nine. The notice of contest on the part of the contestant, and proofs submitted by him, are found in Miscellaneous Document No. 8 of the present session. The sitting member made no answer and offered no proof.

It was contended by the sitting member that no notice of contest had been given him by the contestant, and if otherwise, that it did not appear that such notice had been given him within the thirty days prescribed by the statute of 1851, prescribing the mode of contesting elections in this House. The only evidence of the service of any such notice is contained in the following affidavits:

STATE OF OHIO, *Knox County*, ss:

Before Joseph Watson, a notary public within and for said county and State, personally appeared James T. Irvine, and makes oath that he served a true copy of the within notice of contest upon Hon. Columbus Delano, by leaving it at his residence in Mount Vernon, Knox County, Ohio, on the 29th day of December, A. D. 1864.

JAMES T. IRVINE.

Sworn to and subscribed before me this 7th day of January, A. D. 1865.

[SEAL.]

JOSEPH WATSON,  
Notary Public, Knox County, Ohio.

STATE OF OHIO, *Licking County* ss:

Before me, Henry Brumback, a notary public within and for the county of Licking, State of Ohio, personally came James T. Irvine, and makes oath and says, that in addi-



tion to leaving a copy of the within notice at the residence of the said Delano on the 29th day of December, A. D. 1864, affiant afterward, and on the 5th day of January, A. D. 1865, called upon the said Delano personally as to the service of said notice by copy thereof, left at his residence as aforesaid, and presented to him the original herein, and requested him to acknowledge the service of the same by signing the form of acknowledgment thereto attached in writing, as the same now appears; and, also, on the 7th day of January, A. D. 1865, affiant again called upon the said Delano, at his residence in Mount Vernon, Knox County, Ohio, where said copy had been left, as before stated, and renewed the request to have said form of acknowledgment of service signed by said Delano, at which time he positively refused to sign any acknowledgment of said service, saying he would let Mr. Follett procure his own evidence, without his making any admissions in relation thereto. And further affiant saith not.

JAMES T. IRVINE.

Sworn to and subscribed before me this 19th day of November, A. D. 1865.

[SEAL.]

HENRY BRUMBACK,

*Notary Public of the State of Ohio in and for the county of Licking.*

It was contended by the sitting member—

1st. That the foregoing affidavits, not being depositions taken on notice to the opposite party, in conformity to the provisions of the statute of 1851, before alluded to, are not legal evidence of what they recite.

2d. That if the recitals of these affidavits be taken as proved, still the contestant had failed to "give" him the notice required by the statute. The statute of 1851 (Brightly's Digest, p. 254) contains the following provisions:

Whenever any person shall intend to contest an election of any member of the House of Representatives of the United States, he shall, within thirty days after the result of such election shall have been determined by the officer or board of canvassers authorized by law to determine the same, *give notice* in writing to the member whose seat he designs to contest, of his intention to contest the same, and in said notice shall specify particularly the grounds upon which he relies in the contest.

When any such contestant or returned member shall be desirous of obtaining testimony respecting such election, it shall be lawful for him to make application to any judge of any court of the United States, &c., who shall thereupon issue his writ of *subpoena*, directed to all such witnesses as shall be named to him, requiring the attendance of such witnesses before him at some time and place named in the *subpoena*, in order to be then and there examined respecting the said contested election, in the manner hereinafter provided.

The party at whose instance such *subpoena* may be issued, shall, at least ten days before the day appointed for the examination of the witnesses, give notice, in writing, to the opposite party, of his intention to examine witnesses, which notice shall be served by leaving a copy with the person to be notified, *or at his usual place of abode*.

The question raised by the first objection made by the sitting member is, can service of notice be proved by affidavit, or must the testimony of a witness to the fact of service be obtained, like all other testimony, from witnesses, by deposition taken on notice to the opposite party, in conformity with the statute? The statute does not provide in what manner the fact of service shall be proved, but makes the general provision already cited for taking testimony. It may be noticed that this statute provision does not *require* the testimony of witnesses to be taken in the manner prescribed—only "*it shall be lawful*" to take it in the way therein specified. Therefore, in the absence of any statute *requirement* as to the mode of proof of notice of contest, is the affidavit of a third person sufficient? This is the first case since the enactment of the law of 1851 where the question has been raised, so far as the committee know, or where it could, in practice, have been well raised; for though affidavits have been resorted to in almost every case as proof of the service of notice of contest, yet in every instance till the present case there has been an answer from the sitting member admitting the service of notice or waiving proof of it. The sitting member made no answer in this case, and neither admitted nor denied, but left the contestant to



prove that he had served the notice at all, and within the time prescribed by law.

The committee are of opinion that such proof, to be admissible, must be authorized by statute or some rule established by the tribunal before which the testimony is to be used, and that in the absence of these an affidavit could not be admitted according to the principles which govern in the course of all judicial proceedings. To admit an affidavit of a third person, unknown in character to the sitting member, taken without his knowledge, at a time and place and under circumstances wholly kept from him, is to open a door through which great fraud might be practiced if occasion required. It is a fact, too, as easy of proof in the manner pointed out in the statute for taking testimony as any other fact in the case, and it is deemed by the committee the safer way to require its proof in that mode, if the answer of the sitting member does not sufficiently admit the fact or waive the proof of it. This answer, if made, must by law be in possession of the contestant before he can proceed to the taking of testimony under the statute, and therefore he will always have the means of determining the necessity of proof.

The committee did not, however, close their hearing of the case with their conclusion upon this point, for the reason that they could not know that the House would agree with this conclusion, and in that event it would become ultimately necessary for them to pass upon the merits of the case. The committee were also desirous of reaching the merits of the case, if possible, and therefore, reserving their decision upon all preliminary points, they heard the parties upon the entire proof submitted.

The second point raised by the sitting member was, that "if the recitals of the affidavits of notice be taking as proved, still the contestant had failed to 'give' him the notice required by the statute." The sitting member claimed that the statute required *personal* notice. By the first affidavit of Mr. Irvine it appears that notice was served upon the sitting member "by leaving it at his residence in Mount Vernon, Knox County, Ohio, on the 29th of December, A. D. 1864." The statute provision is, that "the contestant shall give notice in writing to the member whose seat he designs to contest." Is leaving a copy at the residence "giving" the sitting member such notice as the statute requires? Serving of notice by leaving a copy at the residence is not unusual in judicial proceedings, but it is believed by the committee that such service is never legal unless authorized by statute, and can never be substituted for actual notice unless thus sanctioned. In the law of 1851 there is an express provision for leaving a notice of taking depositions at "the usual place of abode" of the opposite party, but none for such service of notice of contest. A reference to the debate in the House at the passage of this act will show that this omission was designed in order to secure actual notice. When the bill was under debate in the House the following amendment was proposed:

*Provided*, That if from any cause not within the control of the contestant said notice cannot be given, then said notice shall be given within thirty days after said disability shall cease.

To which it was proposed to add a further proviso, in these words:

*And provided further*, That in case of the absence of the member whose seat is contested, the notice aforesaid may be served by leaving the same at his place of residence with some member of the family of suitable age to understand the same.

The member offering this last amendment supported it upon the express ground that otherwise "under this bill the notice referred to must be served personally upon the member whose seat it is intended



to contest." Yet both amendments were rejected, and the bill, with this interpretation, became a law. The committee are satisfied that it is the correct construction to require personal notice. If personal notice should be impossible by reason of the absence of the sitting member from the county, or otherwise beyond the reach of the notice, or if from any other cause it is impracticable, the House has at all times control over the matter, and will provide a suitable remedy, as was done in the case of *Williamson vs. Sickles*. (*Bartlett's Contested Cases*, p. 289.)

In the second affidavit of Mr. Irvine it is stated that, January 5, 1864, he presented to the sitting member the original of the notice of contest, and requested him to acknowledge the service of it at his house on a previous day, and that the sitting member declined so to do. The committee are of opinion that this would amount to a sufficient service under the law of 1851, if properly proved, and if within the time prescribed by that law. Upon the mode of proof nothing further need be added. Did this service fall "within thirty days of the time when the result of such election shall have been determined by the officer or board of canvassers authorized by law to determine the same." The statute of Ohio, May 3, 1852, requires this determination to be made "within ten days after the first day of December," but the certificate may be given to the successful candidate at any time thereafter. There is no provision for proclamation or other notice to any one on what day within the specified time this determination is made. There is no way provided by statute by which any one can ascertain on what day within the limit specified the determination has been made. The committee are therefore of opinion that the contestant has thirty days from the last day of the "ten days after the first day of December," unless knowledge has been brought home to him of a determination at an earlier day. Consequently the fifth day of January would be within the thirty days, and in season.

The contestant claimed that the sitting member, by failing to answer, must be taken to have confessed the truth of the allegations in the notice. The statute requires of the sitting member, "within thirty days after the service, to answer such notice, admitting or denying the facts alleged therein, and stating specifically any other grounds upon which he rests the validity of his election." If the contestant and the sitting member were the only parties interested in the representation of this district, it might not be unfair to hold that the sitting member, upon service of notice upon him according to law, must answer as the law requires, or, by neglect or refusal, be taken as confessing the truth of the allegations made in conformity to law against his right to his seat, and abide the judgment of the House upon such confession. But the contestant and the sitting member are by no means the only parties interested in this representation. The electors of the district, each and every one of them, have a vital interest in that question, and no one of them can be precluded, by any laches not his own, from insisting that the choice of the majority shall be regarded. No confession of the sitting member, however it might bind him personally, can place the contestant in the seat, unless he is the choice of the majority, nor deprive that majority of its rightful representation. The sitting member may well be deprived, by his neglect to answer, of reliance upon "any other grounds upon which he rests the validity of his election," for he has never given notice of any such grounds; but the committee are of opinion that the House should require proof that the sitting member has not, and that the contestant has, a majority of the legal votes before unseating the one and



admitting the other, however the sitting member may have seen fit to conduct his own case in a contest.

The notice of contest (Mis. Doc. No. 8) contains fifteen specifications, but none of these were relied on except those which alleged that there were counted by the canvassers, in making up the majority for the sitting member, "soldiers' votes" from returns so defective in form and substance as to make them wholly illegal and void; that the poll-books from the Seventy-eighth and Ninety-seventh regiments Ohio volunteer infantry are not certified to by any of the officers of the election, neither judges nor clerks, as required by the act of March 30, 1864, of the laws of Ohio, section 10, (page 42, printed document;) nor is there a certificate of the oath required by the fifth section of said act. (Pages 41 and 42.) For copies of these poll-books, see pages 18 and 35. The same defect (except as to the oath) is found in the poll-books of the Thirty-second and Twenty-seventh Ohio volunteer infantry, Veteran Reserve Corps, at Rock Island; Thirteenth regiment Ohio volunteer cavalry, on pages 26, 27, 30, and 39. That the poll-book of the Fifteenth regiment Ohio volunteer infantry does not show when, where, or by whom the election was held, the heading being left blank. (See page 19, printed document.)

That from said polls there was returned and counted for Mr. Delano the following number of votes, viz:

Seventy-eighth regiment, printed document, page 13, votes .....	83
Ninety-seventh regiment, printed document, pages 6, 8, 13, votes..	132
Thirty-second regiment, printed document, pages 6, 8, 10, votes ...	21
Veteran Reserve Corps, printed document, pages 5, 8, 12, votes ...	7
Thirteenth regiment, printed document, pages 8, 13, votes .....	18
Twenty-seventh regiment, printed document, page 10, votes .....	17
Fifteenth regiment, printed document, pages 5, 12, votes .....	33

In all .....	311
For contestant from these polls, votes .....	1

From the Ninety-seventh regiment... 310

therefore should be deducted from the sitting member, by reason of these defective and illegal returns, leaving a majority for the contestant of eighty-four on the home and soldier vote.

Those portions of the law of Ohio providing for the voting of soldiers in the field are as follows:

SEC. 1. That whenever, during the existence of the present rebellion, any of the qualified voters of this State shall be in the actual military service thereof, or of the United States, and as such shall be absent from the township or ward of their residence, either within or beyond the limits of the State, on the days appointed by law for holding county, state, congressional, or presidential election within the State, such qualified voters shall be entitled at such time to exercise the right of suffrage as fully as if they were present within their respective townships, or other usual place of election. \* \* \* \* \*

SEC. 10. At the close of the polls, the poll-books shall be signed by the judges and attested by the clerks, the names counted, and the number set down at the foot of the poll-books, and a certificate of the oath of judges and clerks attached thereto.

SEC. 11. Duplicate tally-sheets shall be made out of the votes of each county separately. For this purpose such number of assistant clerks may be appointed by the judges as may be necessary for dispatching the business, who shall take the same oath prescribed for the principal clerks. The votes of each county shall be entered on the tally-sheets thereof, in separate columns, opposite the names of the persons voted for, and the tally-sheets duly certified by the judges and attested by the principal clerks in the manner herein provided.

SEC. 12. After the poll-books are signed, the ballot-box shall be opened and the ballots taken out one at a time by one of the judges, who, while holding the ballot in his hand,



shall announce the county for which it was cast, and the names of the several persons therein contained, together with the respective officers for which each name is designated. He shall then deliver it to the second judge, who, after examining the same, shall pass it to the third judge, who shall string it upon a thread and carefully preserve it. As the ballots are read the clerks and their assistants shall make the proper entries upon the tally-sheets of the proper county.

SEC. 13. When the examination and counting of the ballots are completed, the tally-sheets of each county shall be carefully inspected by the judges, and the number of votes given for each candidate be ascertained and set down opposite his name on the tally-sheet, as indicated in the form herein given.

SEC. 14. After the tally-sheets are certified and attested, the judges shall inclose one tally-sheet for each county in an envelope, and transmit the same, carefully sealed up, by the first mail, express, or other safe means of conveyance, to the clerk of the court of common pleas of such county, who shall file and preserve the same with the poll-books returned from the townships, wards, and election precincts within the county. They shall also inclose one of the poll-books and all the ballots in one envelope or package, and by the next mail, express, or safe means of conveyance, transmit the same, carefully sealed up, to the governor, who, indorsing thereon the date of its receipt, shall deposit the same in the office of the secretary of state, there to remain unopened until delivered to the State board of canvassers, hereafter provided for. They shall inclose the other poll-book, together with one full set of the tally-sheets, in another package or envelope, and by mail, express, or other safe means of conveyance, transmit the same, carefully sealed up, not sooner than five days after the election, to the State auditor, to be by him retained unopened until delivered to the State board of canvassers as aforesaid.

#### BOARD OF CANVASSERS.

SEC. 18. The auditor of state, treasurer of state, and secretary of state shall constitute a State board of canvassers. In case any of these officers decline, or is unable to serve, or be a candidate, then the governor, upon notice to him of such declination, or inability, or candidacy, shall appoint some other suitable person to fill the vacancy so created, who, before entering upon the duties of said appointment, shall take and subscribe an oath faithfully and impartially to discharge the same.

#### CANVASSING RETURNS.

SEC. 20. On the thirtieth day after every such general election, or within three days thereafter, and on the twentieth after any such presidential election, the secretary of state shall, on demand, deliver to the board of canvassers all the poll-books, tally-sheets and ballots so returned and deposited in his office, and the said board shall proceed at once and as rapidly as possible to open and canvass the same, making and certifying duplicate abstracts thereof, by counties, and sorting and arranging and stringing the ballots of each county separately, declare and certify the number of votes shown by the tally-sheets to have been cast for each candidate therein named respectively; one of which abstracts shall be deposited in the office of the governor, and the other in the office of the secretary of state, to which the said poll-books, ballots, and tally-sheets shall be returned and therein kept on file.

SEC. 21. The said poll-books, ballots, tally-sheets and abstracts in the office of the secretary of state shall be at all times subject to the inspection of any candidate or elector interested in the same, and on demand of any such candidate or elector and the payment of one dollar, the secretary of state shall make out and certify to the clerk of the court of common pleas of the proper county a copy of any such abstract.

SEC. 22. Before issuing and delivering any commission to any person claiming to be elected to any of the offices referred to in the first section of this act, the governor shall compare the abstract of the soldiers' vote for the proper county or counties in his office, with the abstracts returned to the office of the secretary of state by the clerks for the same counties, and if it shall appear therefrom that the abstract from the counties omit therefrom such number of the soldiers' vote as would change the result of the aggregate votes, he shall issue the commission to the persons shown by said aggregate vote to be entitled thereto.

SEC. 25. The tally-sheet of the county, State and congressional election may be in the form substantially as follows:

*Tally-sheet of voters, names of persons voted for, for what office, the number of votes given for each candidate, cast by the qualified electors of \_\_\_\_\_ County, in the State of Ohio, in the military service of the United States, at an election held on the \_\_\_\_\_ Tuesday of \_\_\_\_\_, A. D. \_\_\_\_\_, in \_\_\_\_\_, No. \_\_\_\_\_, O. F. \_\_\_\_\_, at \_\_\_\_\_, in the county of \_\_\_\_\_, and State of \_\_\_\_\_, of which A. B., C. D., and E. F. were judges, and J. K. and L. M. clerks.*

Total vote for  
each candidate.

For governor ..... A. B. ....  
For representatives in Congress ..... H. R. ....



SEC. 26. The tally-sheet of presidential elections may be in form substantially as follows :

*Tally-sheet of an election held on the Tuesday next after the first Monday in November, A. D. ———, in ———, No. ———, O. V. ———, at ———, in the county of ———, and State of ———, by qualified voters of the State of Ohio, showing the names of the persons voted for for electors of President and Vice-President of the United States for the State of Ohio, and the number of votes cast for each.*

Number of votes cast  
for each candidate.

L. M. ....  
J. K. ....  
R. M. ....  
F. W. ....

SEC. 27. The certificate and attestation, to be indorsed on the tally-sheets of all such elections by the judges and clerks, shall be substantially as follows :

It is hereby certified that the within and foregoing tally-sheet is correct, and shows the number of votes cast at this election by the qualified electors of ——— County, State of Ohio, thereat, the names of the persons for whom, and the offices for which, the same were cast, and the number given for each candidate.

A. B.,  
C. D.,  
E. F., *Judges.*

Attest: J. K.,  
L. M., *Clerks.*

SEC. 28. When any election under this act shall be held in this State, all the provisions of the general law in relation to frauds at elections and the punishment thereof, consistent with the provisions of this act, shall apply to all elections under this act.

The references here given to the different pages of the record [Mis. Doc. 8] show the defects here alleged to have existed in the poll-books coming up with the other papers from the several camps and voting places in the field to the office of secretary of state. Copies of none of the accompanying papers were produced, and therefore the committee are to presume, in the absence of anything to the contrary, that the other papers required by law to accompany these poll-books did accompany them, and are now on file in their proper place, properly filled up and attested. A reference to the statute cited will show what these papers are which come up with the poll-book, and what use they serve. From this reference it appears that there are to be kept two poll-books, two sets of tally-sheets, the form of which is given in the law, and the ballots themselves counted and strung on a string. The tally-sheet gives the time and place of holding the election, the persons by whom it was conducted, the number of votes cast, and for whom; and the ballots show with equal certainty for whom and how many votes were cast. The poll-book should show when and by whom the election was held, and the names and number of the voters. The law requires one set of tally-sheets to be sent to each county having officers voted for; the other full set of the tally-sheets and one set of poll-books are to be sent to the State auditor; the other poll-books and the ballots are to be sent to the secretary of state. Upon the day specified in the law, the board of canvassers are required, in the manner therein specified, to take and canvass these returns, and "declare and certify the number of votes shown by the tally-sheets to have been cast for each candidate therein named respectively." From these provisions it appears that the result is to be declared from the tally-sheets alone—not from the poll-books at all.

If, therefore, the "tally-sheets" are complete, the means of ascertaining accurately the result are at hand. Indeed, the result could not be determined at all from the poll-books, for they do not disclose for whom a vote was cast. The tally-sheet is the only paper which shows that



result. By counting the ballots anew that result may be verified; but the poll-book would render no such aid. That contains only the number and names of the voters in the aggregate. Now, the law requiring the canvassers to declare and certify the number of votes shown by the tally-sheets, and there being no proof or allegation that the tally-sheets were not correct in form and substance, the return made from the tally-sheets which shows a majority for the sitting member, must prevail. It is competent to overthrow that return by proof, but not without it: *Prima facie* in the first instance, it remains sufficient until evidence in conflict with it shall be introduced satisfying the committee and the House that it is not true. Nothing has been introduced at all conflicting with the result declared from these tally-sheets. Defective poll-books do not conflict with the tally-sheet. They may fail from this defect to corroborate, but do not, therefore, tell a different story. But the law does not require that the tally-sheets shall be corroborated. They stand alone, unless overthrown by positive, not negative, evidence. This view of the law is entirely sustained in a recent case before the supreme court of Ohio, so nearly like this in the particulars here referred to as to be hardly distinguishable from it. It is the case of *Howard vs. Shields*, decided at the December term of that court, A. D. 1865, and not yet published. The committee quote so much of the opinion of the court in that case as bears upon the case under consideration. The syllabus is as follows:

A regular and perfect tally-sheet of an election held under the soldiers' voting law is of itself *prima facie* evidence in such contest of the votes therein indicated.

And the court say in support of this syllabus:

The second error assigned is that the court rejected the tally-sheets and poll-books of three several elections held in the army under the acts passed for that purpose.

The tally-sheets were in conformity to law and unobjectionable. The defects in the poll-books accompanying them were that the number of voters is not stated at the foot, and does not appear otherwise than by counting the names, and that they were not signed by the judges and clerks. In other respects they were regular and according to law. The names of the judges and clerks are recited in the caption of the poll-books, and are signed to the affidavit, which stands immediately below the place where they should have signed the poll-books. The tally-sheets were received and counted by the county canvassers, and form part of the abstract made out by the clerk. The record shows that they were rejected by the court below, together with so much of the abstract of the county canvassers as consisted of the votes therein evidenced.

In rejecting these papers we are satisfied the court erred. The tally-sheet alone makes a *prima facie* case. It is upon the tally-sheets alone that the county canvassers declare the result. (61 O. L., 92, section 17.) The poll-books are not sent to them. If the tally is good before them, it should, till impeached, be good before the court. The policy of the law seems to be that, until the contrary is shown, the tally-sheet shall be taken and considered as a true statement of the number of legal votes cast for each candidate. Of course it is open to be impeached by the other party. But it is hardly necessary to say, that an informal or defective accompanying poll-book, in no way contradicting its statements, is not an impeachment.

If, however, the poll-books were indispensable, was there not substantially a sufficient signing to make them valid as such? The judges and clerks signed the affidavit. We have their oaths and their signatures. Would an additional signature add anything to the verity of the paper? I think not. I think the requirement to sign at the foot, and the requirement to state the whole number of voters, a matter which can be obtained from the body of the poll-book, should be considered as merely directory, and not as absolutely essential. The original act, which requires the county canvassers to make their abstract from the poll-book, and not from the tally-sheet, declares that no election shall be set aside for want of form in the poll-books, provided they contain the substance. (1 S. & C. St., 539, section 33.) If there were defects in substance, and not in form, merely, it is enough to say that the tally-sheets were perfect and unimpeached.

The committee concur in and adopt this reasoning; and inasmuch as in the case before them there is no allegation or complaint that the tally-sheets were not perfect, and there has been no attempt to impeach



them, the committee do not set aside the result as shown by them. That result shows a majority for the sitting member of two hundred and thirty-nine votes.

They therefore report the following resolution:

*Resolved*, That the Hon. Columbus Delano is entitled to the seat occupied by him in this House as the representative from the thirteenth district of Ohio in the 39th Congress.

---

### BOYD vs. KELSO.

The allegations of irregularities and illegalities were vague and the evidence held to be unsatisfactory. The sitting member retained the seat by a *nem. con.* vote.

June 25, 1866.—Mr. Upson, from the Committee of Elections, made the following report.

*The Committee of Elections, to whom was referred the memorial of S. H. Boyd, contesting the right of the Hon. John R. Kelso to a seat in the thirty-ninth Congress as a representative from the fourth congressional district of Missouri, having considered the same, and the evidence submitted in reference thereto, make the following report:*

The election here contested was held on the 8th day of November, A. D. 1864. It appears that the said fourth district is composed of some twenty-one counties. The contestant, on the 9th day of January, A. D. 1865, served on the sitting member a notice (pages 1, 2, and 3, Mis. Doc. No. 93) of intention to contest his right to the seat as a representative of the said fourth congressional district, and setting forth the grounds of contest.

The said specifications are very general, vague, and indefinite, but, so far as can be gathered from them, they raise some objections to the regularity of the election, and the legality of some of the votes at some of the election precincts in the counties of Barry, McDonald, Newton, Jasper, Dade, and Polk, which are included in said district, but state no objections to the election or the votes cast at the election precincts in any of the other counties of the district. The vote, however, of Captain Stephen Julian's company, of the Second regiment Missouri artillery, stationed at St. Louis, was also objected to or questioned in said notice.

The sitting member filed his answer to said notice of contest, (pages 130, 131, and 132, Mis. Doc. 92,) denying the several specifications and allegations of contestant, and alleging certain objections to the election, and to the legality of the votes cast for contestant at various precincts in different counties of the district.

A further formal notice of contest appears on page 8, Mis. Doc. 92, purporting to have been given by the contestant, and accompanied by a certificate of a deputy sheriff, setting forth that he served it on the wife of the contestee on the 21st day of March, 1865, of which notice, however, no other proof of service appears, and no notice seems to have been taken of it by the contestee, and he, on the hearing, objected to its consideration in the case, it not having been given within the time prescribed by the act of February, 1851; and also objected to the 1st, 2d, 9th, 10th, 11th, and 12th specifications in the original notice of contest, for insufficiency in not specifying with particularity the grounds of contest, as required by said act. But as no objection to the sufficiency of



the first notice appears to have been taken in the answer of the contestee, it is probable that, according to the precedents in such cases, the objection to the sufficiency of the first notice, so far as the contestee is concerned, may be considered to have been waived.

The second notice not having been given in time, and not appearing by any proof to have been served as required by law had it been given in time, and no application having been made or leave granted to the contestant to amend his notice after the expiration of the time fixed by the law for serving the same on the contestee, it is not properly in the case, and cannot therefore be considered in this investigation; though, from a casual examination of its contents, the committee think that if it had been admitted and considered it would not probably have materially affected the result.

The contestant not having raised any objection in his notice to the election at any of the precincts in the several counties of the district, other than in the counties of Barry, McDonald, Newton, Jasper, Dade, and Polk, any evidence he may have submitted as to the votes cast at the several election precincts in such other counties is manifestly irrelevant and inadmissible; and the contestee having also objected to such evidence on that account, it is not considered in the case. The evidence, however, is in itself very defective, so that its rejection cannot work any serious prejudice. The sitting member having the certificate of election, *prima facie*, has been legally elected, and it is for the contestant to overcome this *prima facie* right, invalidate the contestee's right to the seat, and show himself entitled thereto.

There is no evidence in this case before the committee to show what votes or returns were included in the final canvass in the office of the secretary of state (Rev. Stat. Mo., vol. 1, page 702, sec. 30) of the votes cast for representative in Congress in this congressional district.

The abstract of the vote cast in the several counties of the district, presented by the contestant, (page 17, Mis. Doc. 92,) on its face purports to give for Boyd 3,888 votes; for Kelso, 3,972; for M. J. Hubble, 400; and for P. B. Larrimore, 4; making a plurality for Kelso of only 84 votes; but the sitting member claims to have this tabular statement corrected by the preceding certified returns furnished by contestant from the office of the secretary of state, (pages 9 to 17, Mis. Doc. No. 92,) which give no returns of votes from Ozark County, and also none from Douglas County alone, but the certified return from Douglas County (page 9, Mis. Doc. 92) shows, as he alleges, that it purports to be made up of votes from Douglas and Ozark Counties combined, and that under the laws of Missouri (Rev. Stat. Mo., vol. 1, page 701, sec. 25) the clerk of Douglas County could not certify any abstract or return of votes except that of Douglas County, and that it being impossible to correct the return by reason of the absence of any separate certified return of the vote for either Ozark County or Douglas County, the entire vote claimed for both counties should be rejected.

The said tabular statement (page 17, Mis. Doc. 92) gives from Ozark County 34 votes for Boyd and none for Kelso, and from Douglas 141 votes for Boyd and 53 for Kelso; and rejecting these, on the face of the papers furnished by contestant, Kelso's plurality would be 206. Without carefully scanning or deciding upon the sufficiency of the specifications in contestant's notice under the law of 1851, further than we have before stated, (the contestee in his answer not having raised any objection to the sufficiency of the same,) the committee have proceeded to examine the evidence submitted to see if that made out any case for contestant as alleged in said notice. The only witnesses produced by



the contestant, as to the election at King's Prairie precinct, in Barry County, are John Goodnight (page 18) and Hood Tate, (page 19.) Each testifies that several persons voted there who were not residents of the township, without taking the oath required in such cases, (1 Rev. Stat. Mo., page 704, sec. 43;) and that several soldiers voted, but it does not appear for whom any of these persons voted, nor but that these soldiers were all lawful voters. What purports to be a copy of the poll-book for this precinct (pages 41, 42, and 43, Mis. Doc. 92) seems also to be in proper form; and from it, it appears that the whole number of persons voting there was 51, while only 42 votes are returned for representative in Congress, viz: 39 for Kelso, and 3 for Boyd.

William Robison and S. H. Carlile testify (pages 20 and 21, Mis. Doc. 92) as to the election at Cassville, or Flatbush precinct, in this county.

Both testify that some soldiers and three other persons, who were non-residents of the county, voted there, but do not say for whom they voted, nor that the soldiers or other persons were not lawful voters. From what is claimed to be a copy of the poll-book for this precinct, (page 50,) though not in the form now prescribed by law, it would seem, if this copy is evidence, that the three non-residents of the county, Jenkins, Hickok, and Nellis, voted for Kelso, but it does not appear but that they were residents of the congressional district, and lawful voters here, under Revised Statutes of Missouri, vol. 1, page 704, sec. 43. Carlile says that, in casting up the vote of Barry County, in making the county canvass, the poll-book of no township was rejected for illegality or informality. John Ray and Enoch Williams testify (page 21) as to the election at Crane Creek.

Ray, who was county clerk, only says that no ballots were returned from Crane Creek, and that the poll-book returned from that township "had the vote of each voter extended opposite the name of said voter, after the manner of a *viva voce* poll-book," and that no poll-book was rejected in casting up the vote of the county.

Williams testifies that he voted at Crane Creek, and did not take any oath at all before voting, and that he saw others who voted in the like manner but gives no names. Says he staid there about an hour, but does not say for whom he voted, nor for whom the others voted; but speaks of having his ticket in his hand when he voted, and of telling the judges of election for whom he voted, but does not say whether he handed his ticket to the judges of election or not, and could not say whether he saw others voting as he did or not.

He shows that he had a ballot when he voted. What is claimed to be the copy of the poll-book for this precinct (page 46) is in the same form as the one alluded to, purporting to be for Flatbush, and, if admissible as evidence for any such purpose, gives Williams's name as voting for Kelso. This is all the testimony of witnesses as to Crane Creek, although it is apparent that the judges of election and many others of the voters there might and would have been called and examined by the contestant if their testimony would have shown the election to have been *viva voce*, or without oath, or invalid for any cause; and the committee do not consider this evidence sufficiently clear, satisfactory, and conclusive, under the circumstances, to warrant them in setting aside the election at Crane Creek; and that as to the other precincts in Barry County to which they have alluded, the testimony is too defective, and fails to make out a case to set aside the elections there.

The testimony of Long, McGraw, and Rice, (pages 26, 27, and 28,) is but hearsay and is inadmissible, and is also mostly in regard to counties not objected to by contestant in his notice of contest.



Bulgin, Vitilow, Breck, and Bowers testify (pages 30 and 31, Doc. 92) as to the election at Cave Spring, in Jasper County. Contestant claims that the election was *viva voce*, but the witnesses swear that it was by ballot, although they admit, as contestant alleges, that the judges of election did not go to Carthage, which contestant claims is the county seat, to cast up the vote of the county.

Carthage was destroyed in the late rebellion and the organization of the county somewhat broken up, and the contestee claims that the courts for the county have since been held at Cave Spring, and that under the ordinance of the Missouri State convention of June 13, 1862, the election was properly held.

It is not claimed by contestant that the voters were not competent and legally qualified, nor that the vote is wrongly given, but that it was irregularly canvassed and returned, and on that account should be rejected.

On the slight showing made, and under all the circumstances under which the election was held, the committee do not feel authorized to reject the vote of this county. Some further considerations tending to this result will also be given hereafter in this report.

Contestant claims that the vote of McDonald County should be rejected on a defectively certified return, or part of a return, for said county presented by him on page 16; and he also claims and insists that the county had been disorganized in consequence of the war. On this showing alone the committee do not see sufficient evidence for rejecting the vote.

The objection urged by contestant to the election in Dade County seems confined in the evidence to Company I, Seventh provisional regiment East Missouri State militia, contestant claiming that the copy of poll-book (pages 32, 33, and 34) shows the original to have been in form a citizens' poll-book, and that the caption does not show where the vote was cast.

The law of Missouri allows the soldiers to vote either *viva voce* or by ballot, and if they voted in this instance by ballot there seems to be no valid objection to the form of the poll-book, even if it is properly in evidence. According to it thirty-one persons voted, and only twenty-nine votes are returned as cast for representative in Congress. But if the objections urged against it by contestant were valid, nothing legally appears to show that this particular vote was ever counted or returned for Dade County. A clerk's certificate is not evidence of that fact.

If abstracts of votes certified by the clerk of a county or secretary of state are evidence, then the abstract on page 158 for Polk County shows a very different aggregate vote there from the abstract on page 17, and would increase contestee's plurality seventeen votes, and show that certain soldiers' votes objected to by contestant as illegal were not counted for contestee.

The evidence of S. H. Julian (page 24) as to irregularities and illegalities in the vote of Battery I, Second Missouri light artillery, has reference almost wholly to the ages of some members of the battery whom he alleges voted, but his information he admits is wholly derived from a copy of a descriptive book or roll of the company, (page 111;) and his knowledge that they voted and for whom they voted he obtained from a copy of the poll-book, but no such copy of said poll-book is given in evidence, and the contestant himself expressly objects (page 26) to all questions to and answers of this witness relative to the statements of said poll-books, on the ground that the poll-book is the best evidence of its own contents, and this objection is fatal to his own testimony so far as



this witness is concerned. The copies of poll-books claimed by contestant to be of this company (pages 80 and 129) do not contain the names of any of the men alleged by Julian to be minors and to have voted at said election for the sitting member, and if his testimony were received in full, his cross-examination would show that several minors voted for the contestant.

But the evidence certified from the office of the secretary of state, as well as from the offices of the several county clerks, is very defective both in substance and in arithmetication, and is also very unsatisfactory and inconclusive. The secretary of state certifies (page 9) that the pages sent up "contain a true and correct copy or transcript of the election returns" made to his office so far as said returns relate to the election of a representative from said fourth congressional district, and instances what is omitted, and further adds in his said certificate "that there are on file in this office the returns from several soldiers' voting places, which were not counted in casting up the vote, from illegality and insufficiency, and which are not contained in the following pages." It would seem from this that the secretary of state, either with or without the consent of the contestant, had concluded to settle not only the question as to what portion of the returns related to the election of representative in Congress from this district, but also as to the illegality and insufficiency of certain of the returns of the soldiers' vote returned for said district, and thus to relieve the committee and the House from the labor of investigation and passing upon them; but when the contestant thus shows that only part of the election returns are certified to the House, it is apparent that no presumption in his favor can arise as to those returns or parts of returns that are omitted; and it is also a matter of serious question whether evidence thus defectively certified should be received or considered.

The committee are asked by the contestant to presume, first, that he has brought before the committee all the returns of votes cast for representative in Congress in said district, as made to the secretary of state, or to the county clerks of the respective counties therein, and then to presume that all these votes so certified to the House were counted in the final canvass. The certificate of the secretary of state (as also of some of the clerks) we have seen is defective, and if evidence for any purpose, shows that all the returns are not certified to the House, and that the returns that are certified are only such portions of each return as the secretary considered had reference to the election of representative in Congress in the fourth district. The statement in the certificate of the secretary of state or of a county clerk appended, and authenticating a copy of a return that he did or did not count or include certain votes in computing the congressional vote, or that he did or did not certify a certain portion of the votes to some other officer, is not of itself evidence of the fact, and is no part of the authentication of the papers which he is empowered by law to make, and the sitting member objected, on the hearing, to the admission or consideration of this kind of certificate as evidence to prove such independent facts.

On these points the contestant's evidence is defective, and the committee are not authorized in the face of such certificates to presume that all the returns of the votes cast have been produced by the contestant, but a fair presumption to the contrary arises; neither are they to presume that the canvassers illegally declared Mr. Kelso elected in the absence of evidence or proofs on the part of the contestant to establish that fact.

Under these circumstances the committee do not feel called upon to



decide upon the various questions raised by the contestant as to the regularity or sufficiency of poll-books and returns, imperfect and defectively certified copies only of which appear to have been laid before them by the contestant, and no proof being produced to show that the votes questioned, even if defectively returned or illegal, were included in the final canvass; and in many instances no specifications referring to such returns or poll-books having been made in contestant's notice of contest.

The contestant certainly cannot claim that any presumption can arise that the canvassers counted in favor of the sitting member votes that were irregularly and defectively returned, and were illegal on their face. It is unnecessary to consider the points raised by the contestee in his defense, or his evidence, further. The committee therefore recommend the adoption of the following resolution:

*Resolved*, That John R. Kelso is entitled to retain his seat in this House as a representative in the thirty-ninth Congress from the fourth congressional district of Missouri.

---

### FULLER vs. DAWSON.

Allegations of illegalities on the part of return judges; also, fraudulent and illegal voting. Held that the charges were not proved or that the illegal votes were not sufficient to overcome the majority of the sitting member. The House sustained the report (July 13, 1866) without a division.

June 21, 1866.—Mr. Paine, from the Committee of Elections, made the following report:

*The Committee of Elections submit the following report in the contested election case of Smith Fuller against John L. Dawson, from the twenty-first congressional district of the State of Pennsylvania:*

The twenty-first congressional district of Pennsylvania includes the counties of Westmoreland, Fayette, and Indiana. The official vote was:

For John L. Dawson .....	10,855
For Smith Fuller .....	10,730

Majority for John L. Dawson .....	125
-----------------------------------	-----

The contestant alleged, in his notice of contest, that the return judges of Westmoreland County unlawfully rejected certain military returns certified to them by the prothonotary of that county; that the same judges omitted to include in their canvass certain other military returns for that county, filed in the office of the secretary of the Commonwealth; that fraudulent and illegal votes were cast for John L. Dawson at certain polls within the district; that the return judges of Indiana and Fayette Counties omitted to compute certain military returns for those counties, filed in the office of the secretary of the Commonwealth; and that, of the aggregate of votes, Smith Fuller had 11,068, and John L. Dawson 10,848.

The contestant claimed, in argument, that 367 lawful military votes were returned, which were not embraced in the canvass of the district board, and that of these votes 254 were cast for Smith Fuller, and 113



for John L. Dawson, as shown by the following table, taken from the contestant's brief:

Company or regiment, and place where election was held.	Fuller.	Dawson.
<i>Soldiers' votes not counted by return judges, but which appear among the returns of the prothonotary of Westmoreland County.</i>		
1. Company F, One hundred and ninety-third regiment, Camp Smithers.	4	1
2. Battery H, Fourth independent artillery, Alexandria, Virginia.....	4	.....
3. McClellan United States Army Hospital.....	3	.....
4. Columbia Hospital, District of Columbia.....	1	.....
5. Camp Fry, District of Columbia.....	2	5
6. Company D, Fourth cavalry.....	13	9
7. Company C, Fourth cavalry.....	18	13
8. *Company C, Seventy-sixth regiment, in the field, Virginia, (duplicate).....	.....	.....
9. Camp Parole, Annapolis, Maryland.....	1	.....
10. Carver Hospital.....	4	4
11. Company A, Eleventh regiment, Fort Dushane, Virginia.....	1	.....
12. Two hundred and sixth regiment, camp in the field, field and staff.....	2	.....
13. Company A, One hundred and fifty-fifth regiment, near Poplar Grove church.....	7	.....
14. Company B, One hundred and fifty-fifth regiment, near Poplar Grove church.....	4	1
15. Company E, Two hundred and eleventh regiment, near Bermuda Hundred, Virginia.....	41	21
16. Lincoln General Hospital.....	15	.....
17. Camp Fifteenth regiment United States Infantry, Lookout Mountain, Tennessee.....	3	.....
18. Cuyler United States Hospital, Philadelphia.....	2	.....
19. Mower United States Hospital.....	6	1
20. Company C, Two hundred and twelfth regiment, Post No. 1, Pope's Head, Virginia.....	4	8
21. Company C, Two hundred and fourth regiment, Piedmont, Virginia.....	6	2
22. Company E, Two hundred and fourth regiment, Piedmont, Virginia.....	2	.....
23. Company E, Fourth cavalry, in the field.....	3	1
24. Company M, One hundredth regiment, Poplar Grove church.....	3	.....
25. Companies C and D, One hundred and fortieth regiment.....	1	.....
<i>Soldiers' votes, single returns from the secretary of state, not embraced in the foregoing returns by prothonotary.</i>		
26. United States Army Hospital, Broad and Prime streets, Philadelphia.....	1	.....
27. One hundred and seventh regiment, Fort Wadsworth.....	.....	1
28. Rendezvous of distribution.....	4	11
29. Company G, Fourth Pennsylvania cavalry, Petersburg.....	1	.....
<i>Soldiers' votes, single returns from the secretary of state, not embraced in returns from prothonotary of Indiana County.</i>		
30. Detachment of Pennsylvania volunteers, rendezvous of distribution.....	3	.....
31. Company E, Ninety-ninth, and Company G, Seventy-sixth regiment.....	3	.....
32. United States Army General Hospital, Twenty-third and Filbert streets, Philadelphia.....	1	.....
<i>Soldiers' votes, single returns from the secretary of state, not embraced in returns from prothonotary of Fayette County.</i>		
33. Rendezvous of distribution, Virginia.....	8	.....
34. Company G, One hundred and fortieth regiment, near Petersburg, Virginia.....	1	.....
35. Camp Hamilton, Company F, One hundred and fifty-second regiment, near Fort Monroe.....	1	.....
36. No. 374 H street, Washington, District of Columbia.....	1	.....



Company or regiment, and place where election was held.	Fuller.	Dawson.
<i>Mixed or miscellaneous soldiers' votes, returned by the secretary of state, not embraced in the foregoing.</i>		
37. Sixteenth and Filbert street hospital, Philadelphia .....	2	-----
38. Satterlee Hospital .....	6	1
39. Company L, Sixth heavy artillery, Accatinek Bridge, Virginia .....	26	11
40. Company H, Two hundred and eleventh regiment, defenses of the James .....	10	13
41. Company F, Twenty-first regiment cavalry, City Point, Virginia .....	3	-----
42. Depot field hospital, City Point, Virginia .....	4	-----
43. Company H, Sixteenth cavalry, Poplar Grove church .....	-----	2
44. Company B, One hundred and sixty-first regiment, Poplar Grove church .....	1	4
<i>Return of soldiers' votes received by the prothonotary of Indiana County after the meeting of return judges, first book, page 163.</i>		
45. Camp Sixty-seventh regiment, Front Royal, Warren County, Virginia .....	28	4
Total .....	254	113
	113	-----
Fuller's majority .....	141	-----

The contestant also claimed in argument that, through an error in the computation of the return judges, John L. Dawson received 3 instead of 2 votes from Company E, One hundred and fifth regiment; that in footing up the votes of Mr. Dawson they also made a mistake of 1 in his favor; and that if these corrections were made in Mr. Dawson's majority of 125, and the military votes given in the foregoing table correctly counted, the result would be as follows:

Majority of uncounted military votes for Smith Fuller .....	141
Corrected majority of John L. Dawson .....	123
Majority for contestant .....	18

The contestant insisted in the argument that if the case should be decided upon technical grounds, eleven specified military returns, giving Mr. Dawson a majority of 31 votes, and alleged to have been actually included in the canvass, would be rejected, and Mr. Dawson's official majority of 125 thereby reduced to the extent of 31 votes. The following is a statement of the returns referred to, with the contestant's objections to each, copied from table No. 6:

	Dawson.	Fuller.	Objections.
<i>Westmoreland County.</i>			
1. Company B, One hundred and forty-second regiment.	8	3	Only nine votes given. Certificate of judges does not state how many voted. Tally-list carries out eight for Dawson, none for Fuller. Return says eleven votes polled, of which Fuller had three; none reported for Dawson.



	Dawson.	Fuller.	Objections.
<i>Westmoreland County—Cont'd.</i>			
2. Company E, Two hundred and sixth regiment.	30	24	Prothonotary's return does not give county, company, or regiment, place of voting, number of votes, nor vote for candidates. Secretary of state's return is entirely blank. Clerk does not certify that the judge was sworn.
3. Company K, Two hundred and sixth regiment.	13	8	Return does not give company, place of voting, name of candidates, vote polled, nor any particulars.
4. Sixteenth cavalry regiment.	1	....	Return does not give company, place of voting, name of candidates, vote polled, nor any particulars.
<i>Indiana County.</i>			
5. Lookout Mountain Hospital.	1	....	Return does not give the number of votes cast. Two of the judges appear to be of the regular army.
6. Company G, Seventy-sixth regiment.	7	6	Prothonotary's return, (p. 95,) no certificate that officers were sworn. Return does not give place of voting, company, or regiment, nor number of votes cast, nor number of votes polled for candidates. Secretary of state returns only four votes given, while vote is set down as five for Fuller and five for Dawson. Total vote is not given in return.
7. Company G, Eleventh regiment.	4	....	Thomas Horden, the judge who swore the officers, certifies that he swore himself; he does not appear to have been sworn. Return does not set forth the county. Mixed, (see book 2, p. 373.)
8. Company A, One hundred and fifty-fifth regiment.	2	....	Return does not give place of voting.
<i>Fayette County.</i>			
9. Company E, One hundred and fortieth regiment.	6	4	Judge does not certify that the officers were sworn. Whole number of votes not stated. Return contains various congressional districts as well as voters. Mixed. Secretary of state gives only ten votes. Tally-paper says, Fuller, five; Dawson, six. Return gives Fuller four, Dawson three.
10. Carver Hospital.....	3	....	Return entirely blank.
11. Seventh cavalry regiment.	1	....	No return. Tally-paper given not signed. Officers not sworn.
	76	45	

Majority in favor of Mr. Dawson, 31.

He also insisted that the law was disregarded in the canvass of the home vote of Westmoreland County, of which Mr. Dawson received a majority of 1,477; that the returns of this vote were characterized by irregularities and frauds; and, finally, that the sitting member had, in his answer, failed to deny the averments of the notice, particularly the averment "that of the votes cast at the October election, 1864, Fuller



received 11,068 votes, and Dawson 10,848," and could not, therefore, dispute them in this contest.

On the other hand, the sitting member, in his answer and argument, insisted that the notice of contest was not served within the time limited by law; that it was never served on him personally or otherwise; that the contestant, on the first argument, abandoned all the averments of the notice except the first, second, fifth, sixth, and eleventh; that the first was alone entitled to consideration, and would not, if true, reduce the majority of the sitting member below fifty-nine; that the second, fifth, and sixth averments were bad, and the proof respecting returns not received by the proper officer before issuing the certificate of election insufficient, because it was neither alleged nor shown that the returns in the office of the secretary of the commonwealth had been "*bona fide* forwarded by the judges in the manner prescribed by law;" that the eleventh was not a particular specification of any ground of contest and was insufficient; that if sufficient it was not sustained by the proofs; that even if an unrestricted re-examination of the entire vote should be made, the sitting member would nevertheless retain his seat; that it was neither proven that all the votes lawfully polled were produced in evidence, nor that those produced in evidence were counted by the return judges; that the committee could only count those votes which were received too late to be counted by the return judges, and which, if received in time, could have been properly included in their returns; that certain fraudulent votes were cast and counted for the contestant, and that certain "false, fraudulent, imperfect, and illegal returns" were made in his favor and included in the canvass of the district board; and, finally, that no lawful votes were excluded from that canvass.

The points made on either side will be considered in the order in which they have been stated.

1. The military returns alleged to have been omitted from the canvass, although in many instances irregular and informal, seem to be good in substance, with the following exceptions, viz:

McClellan hospital, (No. 3.)—The return for Westmoreland County in this case is in all things, except the names and residences, identical with the return from the same hospital for Adams County made by the same officers, and produced in evidence in the case of *Koontz vs. Coffroth*, recently decided by this House. In that case the majority used the following language: "Of the eight alleged as rejected returns for Adams County, the three from the hospitals, viz., Mower, Cuyler, and McClellan, (papers 23, 24, 25,) are by all the committee admitted to be too defectively certified and authenticated to be entitled to any consideration. The law in relation to the certifying, signing, and returning, with the poll-book, the evidence of the administering of the oath to the officers of the election (sections 5 and 15) was wholly disregarded." The minority in the same case expressed the following opinion: "The three returns from the Mower, Cuyler, and McClellan hospitals (papers 12, 23, 24, 25) were rejected because the certificates of the oaths of the election officers were wanting. This was no lawful ground for their rejection, for it appears from the whole papers that the judges and clerks were actually sworn; and the returns, though defective in form, are perfectly intelligible, and clearly within the provisions of the statute applicable to mere informalities." The authority of that decision is unanimously recognized by the committee, although its correctness is still doubted by the minority. It excludes the three votes from McClellan hospital for Westmoreland County, which are claimed by the contestant. Upon



similar but rather stronger grounds the following transcripts, which do not contain the poll-books or certificates of oaths, viz., Battery H, Fourth artillery, (No. 2;) Camp Parole, (No. 9;) Carver hospital, (No. 10;) field and staff, Two hundred and sixth regiment, (No. 12;) and Company A, One hundred and fifty-fifth regiment, (No. 13;) are rejected by the committee. They would give Mr. Dawson four and Mr. Fuller eighteen votes.

Company C, Fourth cavalry, (No. 7).—The certified transcript of the secretary of the commonwealth shows that there were only thirty voters for this district. The admission of this return in evidence being resisted, the votes will stand: for Smith Fuller, seventeen; for John L. Dawson, thirteen.

Lincoln Hospital, (No. 16).—Of these fifteen votes, eight for Westmoreland, five for Indiana, and two for Fayette. The only proof before the committee respecting any of these votes, except the abstract on page 68 of book 1, which is not legal evidence, was the certified transcript of the prothonotary of Westmoreland County. And the question is whether this transcript is competent evidence of the vote for Fayette and Indiana counties. The following are the statutory provisions of Pennsylvania bearing upon the question:

#### MILITARY ELECTION ACT OF 1864.

SECTION 7. Separate poll-books shall be kept and separate returns made for the voters of each city or county; the poll-book shall name the company and regiment, and the place, post, or hospital in which such election is held; the county and township, city, borough, ward, precinct, or election district of each voter shall be indorsed opposite his name on the poll-books; each clerk shall keep one of said poll-books, so that there may be a double list of voters.

SECTION 8. Each ticket shall have written or printed, or partly written and partly printed thereon, the names of all the officers which may properly be voted for at said election for which the said elector desires to vote.

SECTION 9. That the judges to whom any ticket shall be delivered shall, upon the receipt thereof, pronounce with an audible voice the name of the elector; and if no objection is made to him, and the judges are satisfied that said elector is a citizen of the United States and legally entitled, according to the constitution and laws of this State, to vote at said election, shall immediately put said ticket in the box, or other receptacle therefor, without inspecting the names of persons voted for; and the clerks shall enter the name of the elector on the poll-book of his county, ward, precinct, city, borough, or township, and county of his residence, substantially in pursuance of the form hereinafter given.

SECTION 10. At the close of the polls the number of voters shall be counted and set down at the foot of the list of voters and certified and signed by the judges and attested by the clerks.

SECTION 11. After the poll-books are signed, the ballot-box shall be opened and the tickets therein contained shall be taken out, one at a time, by one of the judges, who shall read distinctly, while the ticket remains in his hand, the name or names therein contained for the several officers voted for, and then deliver it to the second judge, who shall examine the same, and pass it to the third judge, who shall string the vote for each county upon a separate thread and carefully preserve the same; the same method shall be pursued as to each ticket taken out until all the votes are counted.

SECTION 13. As a check in counting, each clerk shall keep a tally-list for each county from which votes shall have been received, which tally-list shall constitute a part of the poll-book.

SECTION 14. After the examination of the tickets shall be completed, the number of votes for each person in the county poll-books, as aforesaid, shall be enumerated, under the inspection of the judges, and set down as hereinafter provided, in the form of the poll-book.

SECTION 16. A return, in writing, shall be made in each poll-book setting forth, in words at length, the whole number of ballots cast for each office, (except ballots rejected,) the name of each person voted for, and the number of votes given to each person, for each different office; which return shall be certified as correct, signed by the judges, and attested by the clerks. Such return shall be substantially as follows:

SECTION 17. After canvassing the votes, in manner aforesaid, the judges shall put in an envelope one of the poll-books, with its tally-list and return of each city or county, together with the tickets, and transmit the same, properly sealed up and directed, through the nearest post office, or by express, as soon as possible thereafter, to the prothonotary



of the court of common pleas of the city or county in which such electors would have voted if not in the military service aforesaid, (being the city or county for which the poll-book was kept,) and the other poll-book of said city or county, enclosed in an envelope, and sealed as aforesaid, and properly directed, shall be delivered to one of the commissioners hereinafter provided for, if such commissioner calls for the same in ten days; and if not so called for, the same shall be transmitted by mail, or by express, as soon as possible thereafter, to the secretary of the commonwealth, who shall carefully preserve the same, and on demand of the proper prothonotary deliver to said prothonotary, under his hand and official seal, a certified copy of the return of votes so transmitted to and received by him, for said city or county of which the demandant is prothonotary.

#### GENERAL ELECTION LAW.

##### *Duties of the prothonotary.*

67. It shall be the duty of the prothonotary of every county to whom the return of any election shall be delivered by the judges, as aforesaid, when said judges are required to send a copy of said return to the secretary of the commonwealth, to make out a copy of such return, certified under his hand and official seal, and forthwith to transmit such copy, under a sealed cover, to the secretary of the commonwealth, by placing the same in the nearest post office. It shall also be the duty of the prothonotary of every county to record all the election returns in a book, to be procured for that purpose, and to lay the returns of the election of county commissioners and county auditors, and of all township officers, before the court of quarter sessions of such county.

68. It shall be the duty of every prothonotary to give a certified copy of the list of voters and other papers deposited in his office by the judges of an election to any person applying for the same on payment of the usual fees, as in other cases.

These provisions do not seem to make the certified transcript of the prothonotary of one county competent evidence of the votes of other counties. The prothonotary appears to be the lawful depository of military returns, so far as they pertain to his own county, and no further. And he can only certify to those of which he is the lawful custodian; at the same time the practical effect of such a construction of the law should not be overlooked. Separate poll-books, tally-lists, and returns are made for each of the counties. If three voters—one from each county—present themselves at the polls, their ballots are all deposited, without number, mark, or other means of identification, in one ballot-box, and the name of each is entered upon a separate poll-book for his county. At the close of the polls the judges count the votes and find three for representative in Congress from this district. Suppose one to be for Mr. Dawson and two for Mr. Fuller; the judges are unable to prepare either the separate tally-lists or the separate returns, because they cannot know whether the vote for Mr. Dawson was cast by the Westmoreland, Indiana, or Fayette voter. A literal compliance with the law is absolutely impossible. They know that for the entire district Mr. Dawson appears to have one vote and Mr. Fuller two, but to which county to return the respective votes they cannot possibly decide. And if they make a return purporting to show for which counties the respective votes for Mr. Dawson and Mr. Fuller were cast, it must necessarily be fictitious. It is, therefore, impossible for the county return judges, and, of course, for the district return judges, to canvass any votes cast under such circumstances. And unless there is some other legal mode of proof, such votes might be utterly lost in a contest in this House, if a transcript certified by the prothonotary of one county could not be admitted to prove the votes of another. But there is another instrument of proof—the certified transcript of the secretary of the commonwealth, who is the lawful depository of military returns for every county in the State. This is not produced in the present case, and only eight of the votes contained in this return can be counted.

Company C, Two hundred and twelfth regiment, (No. 20.)—To this return, which gives Mr. Dawson a majority of four, there is the same objection as to the last, and the additional objection that it emanates



from Allegheny County, which is not in the district, and purports to be not a copy of anything, but merely an abstract of votes.

Company E, Two hundred and fourth regiment, (No. 22,) and Company E, Fourth cavalry, (No. 23,) are also to be excluded for the same reason.

Company E, Ninety-ninth regiment, and Company G, Seventy-sixth regiment, (No. 31.)—This return was counted as number 51, Cuyler hospital, and should not be counted a second time.

Camp Hamilton, (No. 35;) Filbert street hospital, (No. 37;) Satterlee hospital, (No. 38;) company H, Two hundred and eleventh regiment.—These four returns are obviously worthless. In the first of them the poll-book, tally-list, and return are without signatures; in the second, the tally-list and return are without signatures; in the third, the poll-book alone is signed by the judges, the tally-list is signed only by the clerks, and there is no return proper; and in the fourth, the poll-book, tally-list, and return are without signatures.

Depot field hospital, (No. 42.)—It is claimed that this precinct gave Mr. Fuller four votes and Mr. Dawson none. It is true that only four voters for this district are named, but both in the tally-list and in the return it is certified that Smith Fuller had four votes and John L. Dawson two votes. It is hard to see why Mr. Fuller should have them all. He should have two and Mr. Dawson two.

As the result of this examination, made without reference to the points raised by the sitting member, the following reduction is to be made in Mr. Fuller's alleged majority of uncounted military votes:

Majority of uncounted military votes..... 141

	Claimed—		Correct—		S. Fuller's	
	D.	F.	D.	F.	Loss.	Gain.
Battery H, Fourth artillery .....	..	4	..	..	4	..
McClellan hospital.....	..	3	..	..	3	..
Company C, Fourth cavalry .....	13	18	13	17	1	..
Camp Parole.....	..	1	..	..	1	..
Carver hospital .....	4	4	..	..	..	..
Two hundred and sixth regiment field and staff .....	..	2	..	..	2	..
Company A, One hundred and fifty-fifth regiment.....	..	7	..	..	7	..
Lincoln hospital.....	..	15	..	8	7	..
Company E, Two hundred and fourth regiment.....	..	2	..	..	2	..
Company E, Fourth Cavalry .....	1	3	..	..	2	..
Companies E and C, Ninety-ninth and Seventy-sixth regiments.....	..	3	..	..	3	..
Camp Hamilton.....	..	1	..	..	1	..
Filbert street hospital .....	..	2	..	..	2	..
Satterlee hospital .....	1	6	..	..	5	..
Depot field hospital .....	..	4	2	2	4	..
Company C, Two hundred and twelfth regiment.....	8	4	..	..	..	4
Company H, Two hundred and eleventh regiment.....	13	10	..	..	..	3
					44	7

Reduction of 44 less 7..... 37



2. It is maintained that the return judges erroneously counted Mr. Dawson's vote three instead of two in the case of Company E, One hundred and fifth regiment. It is true that he received only two of these votes, one of the three having been cast for James H. Hopkins. But there is no proof that the three votes were counted for him except in the table on page 390 of the second book. That table purports to be a transcript of a paper signed, not by all nor by a majority of the return judges, but by "James C. Clark, president of the meeting of return judges," deposited in the office of the prothonotary of Westmoreland County, and by him certified.

In section 63 of the general election law, (Purdon, page 378,) it is provided that when, as in the case before us, two or more counties compose a congressional district, "the clerks shall make out a fair statement of all the votes" given in the county for the several candidates, "which shall be signed by said judges and attested by the clerks, and one of the said judges shall take charge of such certificate, and shall produce the same at a meeting of one judge from each county," at a place within the district designated by law, on the fourth Friday after the election.

This paper, exhibited on page 360 of the second book, is inadmissible because only signed by one of the judges; but it would not be evidence before the committee, even if signed by all the county judges, for the reason that when a congressional district is composed of two or more counties there is no authority for depositing any return or statement of the county board in the office of the prothonotary, as will be more fully shown hereafter. An error is alleged in the footing of Mr. Dawson's vote. It is manifest that the figures, as given by the contestant, are not correctly added. But while the proofs do show Mr. Dawson's home vote in each of three counties, and his military vote in Westmoreland and Fayette to have been as stated, the only modes of arriving at the military vote of Indiana County are, first, by subtracting the known votes from the aggregate, and, second, by taking the prothonotary's computation on page 96 of the first book. The first gives 128 as the military vote of Indiana County; and if it is correct, no error of addition was made by the district board. The prothonotary's statement makes this vote 127, but it omits one return, (No. 52,) and is not competent as evidence, because it is merely a certified computation, and not a certified transcript of any official writing authorized by law.

3. If there is any specification in the notice of contest sufficient to put the sitting member upon his defense against the attempt to reduce his official majority, it is the eleventh, in which it is alleged that Smith Fuller had for Congress 11,068 votes; John L. Dawson had for Congress 10,848 votes. But the official vote for Mr. Dawson was only 10,855. Under the notice of contest, therefore, his aggregate could only be reduced by seven votes. And it is evident that the attempt cannot be successful unless it is shown (1) that the votes embraced in these returns were actually counted, and (2) that it was unlawful to count them. The only evidence that they were actually counted, aside from what appears in the table on page 389 of the second book, and relates exclusively to Westmoreland County, is to be found in the fact that the returns themselves are on file in the office of the secretary of the commonwealth or county prothonotary. But while it might well be claimed that the presence of regular returns in these offices would be *prima facie* evidence that they were embraced in the canvass, how can it be said that the presence of irregular returns would be *prima facie* evidence



that they were counted? It seems to the committee that the presumption would be in the opposite direction. It has already been shown that the table on pages 389 and 390 is not competent evidence in the case. In order to determine whether it has been shown that it would have been unlawful to count these votes, the committee will consider the several returns in the order in which they appear in the table:

Company B, One hundred and forty-second regiment, (No. 1.)—The transcript certified by the secretary of the Commonwealth, (book 2, page 59) shows in the poll-book the names of only nine votes, in the tally-list gives Mr. Dawson eight votes, and in the return shows that eleven votes were polled, and that Mr. Fuller received three. The prothonotary's certified transcript of the return (book 2, page 36) shows that eleven votes were polled, of which Mr. Dawson received eight and Mr. Fuller three. The prothonotary's statement on page 77 of book 1, offered in evidence by the contestant, contains the names of Samuel Barr and Peter Rowan, both of Westmoreland County, in addition to the nine given by the secretary of the Commonwealth. But this statement being a mere abstract, and not a transcript, is not competent evidence.

In the transcript from the office of the secretary of the Commonwealth (book 2, page 259) the candidates for the several offices named in the tally-list are, without exception, different from those named in the return, while the return from the prothonotary's office, (book 2, page 36,) and the abstract on page 77 of the first book, give all the votes and candidates found on both the tally-list and return from the secretary's office. In all cases the return should give precisely the same candidates and votes as the tally-list. The transcript from the office of the secretary of the commonwealth is, therefore, on its face, irregular, while it is not apparent whether the irregularities originated with the judges of the election or in the secretary's office. It seems to the committee that this transcript cannot be relied upon as evidence. In the transcript from the prothonotary's office, the contestant does not give the poll-book or tally-list, but only the return. The return is regular, and the presumption is that the poll-book and tally-list, if produced, would also prove to be regular. And this presumption would become a certainty as to the poll-book, if the abstract offered by the contestant, on page 77 of book 1, were competent evidence, for that gives the names of eleven Westmoreland County voters. In the opinion of the committee, it has not been shown that this return ought not to have been canvassed. It does not appear that the majority of five, which this return purports to give for Mr. Dawson should be deducted from his aggregate majority of 125, if it was in fact included therein.

Company E, Two hundred and sixth regiment, (No. 2.)—The transcript from the office of the secretary of the Commonwealth, although informal in the return properly so called, and in the clerk's certificate, is substantially in compliance with the law.

Company K, Two hundred and sixth regiment, (No. 3.)—The prothonotary certifies that the transcript given on pages 68 and 69 of the second book is a correct copy of the poll-book, tally-list, and certificate of the return of the election, but makes no allusion to the certificates of oaths in the case. If these votes were in fact canvassed, and the only evidence upon which the canvass was made was such as is found in this transcript, it is clear that, under the rule adopted by the majority of the committee respecting the hospital returns in the case of *Koontz vs. Coffroth*, these votes ought not to have been counted, for the certificates of oaths are entirely wanting. But it is not shown affirmatively that this was the only evidence, and the transcript raises no such presump-



tion, because the prothonotary's certificate does not exclude the idea that perfect certificates may have been on file in his office.

Sixteenth Pennsylvania regiment, (No. 4.)—The contestant does not produce in this case a transcript of the poll-book, certificate of oaths, or tally-list, but only of the return, properly so called. This return shows the regiment, place of voting, vote polled, and candidate voted for. It does not appear that the poll-book, tally-list, or certificate of oaths, which were not produced, were irregular.

Lookout Mountain Hospital, (No. 5.)—Only the return, strictly so called, is given in the prothonotary's transcript. That does not contain a statement of the whole number of votes cast; but the tally-paper may show it, if produced. The following returns, among others, admitted in favor of the contestant, exhibit the same informalities: Company A, Eleventh regiment; Company C, Two hundred and fourth regiment; Companies C and D, One hundred and fortieth and One hundred and sixteenth regiments; and United States Army Hospital, Broad and Prime streets, Philadelphia. But Hospital Steward N. R. Carson, United States Army, and Medical Cadet George W. Terabery, United States Army, were two of the judges of election. The provisions of the military election act apply to all qualified electors of the Commonwealth who are in any actual military service under a requisition from the President of the United States, or by the authority of the Commonwealth. In the opinion of the committee, the entire volunteer army was in the military service under the President's requisition, and volunteer officers appointed by the President were as much a part of that army as those appointed by State authority; but as the regular army was not in the military service under the President's requisition. These two judges appear to have belonged to the regular army, and the vote ought not to have been counted for Mr. Dawson. .

Company G, Seventy-sixth regiment, (No. 6.)—The secretary of the commonwealth (B. 2, p. 188) names only four voters, all from Indiana County, and yet gives each candidate five votes. The transcript from the prothonotary of Indiana County (B. 2, p. 95) exhibits the names of the same voters from Indiana County, and nine others from Westmoreland County, and gives Mr. Dawson seven and Mr. Fuller six; but the rule recognized in the case of Lincoln hospital admits this latter transcript only as evidence for Indiana County. These votes ought not to have been counted, if, in fact, they were counted. Their rejection would in that case reduce the official majority of Mr. Dawson by one vote.

Company G, Eleventh regiment, (No. 7.)—This is the correct vote for Indiana County, (B. 2, pp. 123, 373.) The clerks and two of the judges were regularly sworn. Thos. Horden certifies that he administered the oath to Thos. Horden and J. W. Brindell, as judges, and to both the clerks. I. McAllister one of the clerks, certifies that he administered the oath to the third judge, J. Shepler. All were therefore regularly sworn except Mr. Horden. The return should not be rejected.

Company A, One hundred and fifty-fifth regiment, (No. 8.)—The objection is that the return does not give the place of voting; but, the poll-book shows the place to have been near Poplar Grove church, Dinwiddie County, Virginia,

Company E, One hundred and fortieth regiment, (No. 9.)—In the transcript from the office of the secretary of the commonwealth (B. 2, p. 358) the poll-book signed by the judges shows that ten votes were cast for the district; the tally-list signed by the two clerks shows that Smith Fuller had five and John L. Dawson six votes, while the return itself, signed by the judges, shows that Smith Fuller had four and John L. Dawson three votes. The certificate of the prothonotary of West-



moreland County (B. 2, p. 166) shows that four of these were cast for Smith Fuller and six for John L. Dawson. But it also shows that only three of the ten votes were cast by electors of Westmoreland County. The vote, if counted, would stand for Mr. Fuller four, for Mr. Dawson three, and there would result a reduction in Mr. Dawson's majority of three votes.

Carver hospital, (No. 10).—The transcript in this case is sufficient. That which is wanting in the return proper is supplied in the poll-book and tally-list.

Seventh Pennsylvania cavalry, (No. 11).—The document certified on page 304 of book 2 is worthless as evidence, being merely an unsigned tally-list, and if it secured Mr. Dawson one vote, that vote should be deducted from his majority.

As the result of the examination of this branch of the contestant's claims, which has been made also without reference to the points raised by the sitting member, the following votes, if they were in fact counted, are to be deducted from Mr. Dawson's official majority of..... 125

	Official.		Correct.		Loss.
	D.	F.	D.	F.	
Lookout hospital.....	1	..	..	..	1
Company G, Seventy-sixth regiment.....	7	6	..	..	1
Company E, One hundred and fortieth regiment.	6	4	3	4	3
Seventh Pennsylvania cavalry .....	1	..	..	..	1
					— 6
Corrected majority for J. L. Dawson .....					119

4. The objections to the regularity of the home vote of Westmoreland County do not seem to the committee to have been well taken. The military election act of August 25, 1864, requires the county judges, at their first meeting, to adjourn until the third Friday after the election, for the purpose of counting the soldiers' vote. If this leaves it still obligatory upon the judges to compute the home vote at their first meeting, the presumption that they did so, which results from the official action of the district board and governor, is not destroyed by any contrary proof in this case. When two or more counties compose a congressional district, the county judges do not, either at the first or second meeting, make any returns for the prothonotary or the secretary of the commonwealth. They only make out the "fair statement" for the district board provided for in section 63 of the general election law. In such cases it is the district judges who make the returns for the prothonotary and secretary of the commonwealth. If the county judges do prepare such "fair statement of the home vote" at the first meeting, they will, nevertheless, necessarily make a new statement at the second meeting, embracing both the home and military votes; and this latter only will go to the district board. While it is not shown that such a statement was not made at the first meeting of the Westmorland County judges, it is clear to the committee that the statement made at the second meeting, and set forth on page 392 of the second book, is in substantial compliance with the law.

5. In the opinion of the committee the answer to the eleventh averment of the notice of contest is as specific and direct as the averment itself.

This examination of the contestant's case has been made without reference to the points raised by the sitting member, and gives the fol-



lowing results, viz: Upon the hypothesis that the illegal returns, to which the contestant objected, were actually canvassed in favor of Mr. Dawson and the notice of contest permits the contestant to attack them, the vote will be—

Official majority for J. L. Dawson .....	125
Deduct for illegal returns .....	6
	<hr/>
	119
Uncounted soldiers' vote, majority for S. Fuller .....	141
Deduct for illegal returns .....	37
	<hr/>
	104
	<hr/>
Majority for J. L. Dawson .....	15
	<hr/>

If it is assumed that these illegal returns were not canvassed, or that the notice of contest does not permit the contestant to attack them, Mr. Dawson's majority will be twenty-one.

It is unnecessary to decide the questions raised by the sitting member, some of which go to the whole, and others to parts of the contestant's case.

The following resolution is submitted to the House:

*Resolved*, That Hon. John L. Dawson is entitled to retain his seat as representative in the thirty-ninth Congress from the twenty-first district of the State of Pennsylvania.

### • KOONTZ vs. COFFROTH.

Early in the session the House gave the seat on a *prima facie* contest to Mr. Coffroth, pending a contest on the merits.

There were allegations of fraudulent and illegal voting.

House adopted the report without debate or a division, July 13, 1866.

July 9, 1866.—Mr. McClurg, from the Committee of Elections, made the following report:

*The Committee of Elections, to whom was referred the memorial of William H. Koontz, contesting the right of the Hon. Alexander H. Coffroth to a seat in this House as a representative from the sixteenth congressional district of Pennsylvania, as more fully appears from the following resolutions adopted by the House at its present session, to wit:*

*Resolved*, That Alexander H. Coffroth, upon the certificates and papers relating to the election in the sixteenth congressional district of the State of Pennsylvania, has the *prima facie* right to the vacant seat from that district, and is entitled to take the oath of office and occupy a seat in this House as the representative in Congress from said district, without prejudice to the right of William H. Koontz, claiming to have been duly elected thereto, to contest his right to said seat upon the merits.

*Resolved*, That William H. Koontz, desiring to contest the right of Hon. Alexander H. Coffroth to a seat in this House as a representative from the sixteenth district of the State of Pennsylvania, be, and he is, required to serve upon the said Coffroth, within fifteen days after the passage of this resolution, a particular statement of the grounds of said contest, and that the said Coffroth be, and he is hereby, required to serve upon the said Koontz his answer thereto within fifteen days thereafter, and that both parties be allowed sixty days next after the service of said answer to take testimony in support of their several allegations and denials, notice of intention to examine witnesses to be given to the opposite party at least five days before their examination, but neither party to give notice of taking testimony within less than five days between the



*the close of taking it at one place and its commencement at another, but in all other respects in the manner prescribed in the act of February 19, 1851—submit the following:*

The sixteenth congressional district of Pennsylvania is composed of the counties of Adams, Bedford, Franklin, Fulton, and Somerset. The election here contested was held on the second Tuesday of October, 1864.

It is agreed between the sitting member, A. H. Coffroth, and the contestant, W. H. Koontz, (see page 19, Mis. Doc. No. 117,) that the official count of votes was, in the aggregate, 11,067 for A. H. Coffroth and 10,979 for W. H. Koontz, "as shown by the returns made by the boards of return judges of the counties of Somerset, Fulton, and Franklin of the home and soldiers' vote of said counties; by the board of return judges of Bedford County of the home vote, and by a majority of the judges of said board of Bedford County of the soldiers' vote thereof; and by a majority of the judges of the county board of return judges of Adams County of the home and soldiers' vote of said county," giving by such count to A. H. Coffroth a majority of 88 votes.

The contestant alleged in his notice of contest, and claimed in argument, that said returns do not contain all the votes cast for member of Congress in said district, but that certain returns of soldiers' votes were not embraced in the count by the return judges of the counties of Bedford, Fulton, and Adams, and that of such uncounted soldiers' vote 258 were cast for W. H. Koontz and 99 for A. H. Coffroth, as shown by the following table, taken from the brief of the contestant:

	Koontz.	Coffroth.
No. 1. Company H, Two hundred and eighth regiment, army of the James . . . . .	34	18
2. Barracks No. 1, Soldiers' Rest, Washington, District of Columbia . . . . .	58	29
3. Company G, Two hundred and fifth regiment . . . . .	8	2
4. Mower Hospital, United States, Philadelphia . . . . .	1	
5. Cuyler United States Hospital, Philadelphia . . . . .	1	
6. McClellan United States Hospital, Philadelphia . . . . .	3	
7. One hundred and thirty-eighth Pennsylvania regiment, Front Royal, Virginia . . . . .	32	1
8. One hundred and eighty-fourth Pennsylvania regiment . . . . .	39	21
9. Two hundred and second Pennsylvania regiment, White Plains . . . . .	27	15
10. Twenty-first Pennsylvania cavalry, City Point, Virginia . . . . .	36	4
11. Two hundred and tenth Pennsylvania regiment . . . . .	19	9
Total . . . . .	258	99

The contestant further alleged, and claimed in argument, that sundry votes in Adams and Bedford Counties were cast and counted for Mr. Coffroth—seventeen in Bedford and sixteen in Adams—which should have been rejected, and should now be deducted, because said votes were cast by paupers, who, he contended, had no right to vote under the laws of Pennsylvania.

The contestant also alleged and contended that, should the committee not sustain him in his view of the law, the seventeen votes of Bedford County should be deducted because said pauper votes were residents of other townships than the one in which they voted.



The contestant claimed two votes which had not been counted in district of Adams County, composed of townships of Liberty and Hamilton.

The sitting member, Mr. Coffroth, on the other hand, alleged in his answer, and claimed in argument, that the votes returned from the various hospitals and camps named in the above table should not be counted for contestant, for reasons specifically set forth in each case, which will be considered, each in the order mentioned in said table.

Sitting member also alleged and claimed that other illegal votes were cast and counted for the contestant which should be rejected, which will be considered in due order.

Sitting member also, having denied in his answer each and every allegation of contestant, took issue as to the law and the facts in case of the votes of paupers in Adams and Bedford Counties; this will also be considered.

It may be here remarked, that the contestant objects to the testimony of the sitting member that assails any of the votes cast and already counted, claiming that an allegation that all legal votes had been added and counted for contestant was an admission that all that had been counted were legal. The committee cannot see the correctness of the proposition or the justice in excluding any legal testimony that will tend to the purification of the ballot-box. When an admission is made, it must be construed liberally, and taken in connection with the whole answer. The committee, therefore, overrule this objection of contestant to testimony.

Now, to the consideration of the points made, in their order.

Soldiers' votes in above table, No. 1, Company H, Two hundred and eighth regiment, army of the James.—The testimony of three witnesses, O. E. Shannon, prothonotary of Bedford County, Moses A. Points, and Valentine Vondersmith, on pages 24 and 25 of Mis. Doc. No. 117, is positive and conclusive that the return of this company *was not received and counted* by the return judges. An inspection of the return of said company, properly certified by the prothonotary of Bedford County as a full and true copy, together with the poll-book, number and names of voters, and tally-list, each properly certified, found on pages 33, 34, 35, 36, 37, and 38, will show that said return and other papers were regular and legal, the very forms having been regarded.

In the absence of a certified copy of this return from the prothonotary of Fulton County, a remedy is introduced by contestant in the testimony of Joseph C. Long, (page 26, Mis. Doc. No. 117,) who testifies that 16 votes named were from Fulton County, and whose testimony is corroborated by that of Robert N. Shimer, on page 52, and by that of John A. Robinson, (pages 48 and 49,) and that the return of Company H, (above-named company,) for Fulton County, signed by same judges and clerks, was rejected by the return judges of Fulton County, there being nine votes for Mr. Koontz and six votes for Mr. Coffroth.

The committee are, therefore, clearly of the opinion that said votes should be counted—34 for Mr. Koontz and 18 for Mr. Coffroth, *less one* from Mr. Koontz, for discrepancy between return and rejected votes in Fulton County, as shown by the testimony of witnesses.

It is manifest that returns were sent to each county, Bedford and Fulton, that the votes might be counted in the counties to which the voters respectively belonged. The fairness and honesty of conducting the election is proved by Robert A. Shimer and John H. Wilt, (page 52,) and no attempt is made by sitting member to prove fraud.

No. 2. Barracks No. 1, Soldiers' Rest, Washington, D. C.—This vote, as claimed, 58 for Koontz and 29 for Coffroth, is proven by testimony of



O. E. Shannon, prothonotary of Bedford County, (on page 25,) not to have been received nor counted by the return judges of Bedford County, and by the testimony of John A. Robinson, prothonotary of Fulton County, (pages 48 and 54,) not to have been received and counted by the return judges of Fulton County. On page 48, Mr. Robinson testifies: "There were only 22 soldiers' votes for William H. Koontz, and 4 soldiers' votes for A. H. Coffroth," and on page 54 he shows that neither in whole nor in part did those 22 votes include Barracks No. 1.

The sitting member, in his answer, page 7, admitted Mr. Koontz had 58 votes and Mr. Coffroth 29 votes, but alleged that the return was *illegal* and *fraudulent*. But, in his argument, he did not claim that these allegations were true, but relied upon a conflict in the number of votes, 87, and number and names, appearing on the list of names, pages 39, 42, and 45.

An examination of returns, pages, 39, 42, and 45, will show that the voters were residents of two counties, Bedford and Fulton, and that a return was sent to Bedford County with a list of 48 names, and a certificate that Mr. Koontz had 58 votes and Mr. Coffroth 29 votes; and that a return was sent to Fulton County with a list of 37 names, but with no certificate that any votes were cast for either Mr. Koontz or Mr. Coffroth, or any other candidate for Congress; showing that 87 Bedford and Fulton County votes were added together for the congressional vote, and all returned to but one county of the same congressional district, Bedford County.

But the sitting member, in his argument, contended that these votes should be excluded: "First, because the voters were not in the military service; second, because they were not assigned to companies, or, if assigned, assigned to regiments, because the return names no separate poll-book, and that the voting by regiments is illegal.

It is almost useless for the committee to state that the practice at least has been to regard drafted men as in the military service from the date of draft, and that they were considered deserters upon failure to report. For, in this case, the evidence is distinct that the men were "ordered to Washington City," "went into camp," "were designated and ordered to two regiments, Fifty-sixth and One hundred and seventh Pennsylvania volunteers," "were soldiers assigned to regiments, and on their way to the front." (See testimony of Anderson, Cooper, Smith, Akers, on pages 27, 28, 29, 30, and 31, Mis. Doc. No. 117.) The men were assigned to regiments, and were in actual military service under a requisition from the President of the United States, as all were who were in the volunteer service, and that such were entitled to vote. See section 1 of soldiers' voting law; see also section 2, which says: When there shall be ten or more voters at any place who shall be unable to attend any company-poll, or their proper place of election, the electors present may open a poll," &c.

The objection of sitting member that "the soldiers' election law requires the polls to remain open at least three hours" is regarded by the committee as frivolous, when he makes no effort to prove that any voter was prevented from casting his vote, but only objects to votes that were cast, and when no attempt is made to prove fraud. Neither is there positive testimony that the polls did not remain open three hours.

This poll should be counted—Koontz, 58; Coffroth, 29.

No. 3. Company G, Two hundred and fifth regiment.—The vote of this company is counted by the sitting member—Koontz, 8; Coffroth, 2—as correct.

No. 4. Mower United States hospital, Philadelphia.—That this return,



and those of Nos. 5, 6, 7, 8, 9, 10, and 11, above, eight in all, were rejected in Adams County. The evidence is to be found on pages 62, 63, 64, and 65, in testimony of William S. Cart.

The sitting member claimed that there was no certificate that the officers of election were sworn, nor a certificate that more than ten electors were present.

Should such certificate be required, in this case it does appear at the foot of page 102. The poll-book, certificate of oaths, number and names of voters, tally-paper, and return, certified by the secretary of the commonwealth, all appear on pages 102, 103, and 104. Therefore, the vote on this return from Adams County we count for Mr. Koontz.

No. 5. Cuyler United States hospital, Philadelphia.—The committee need not examine this return, notwithstanding all informality is cured by the testimony of the voter who swears he voted for Mr. Koontz. But the name of the witness is not mentioned in the notice to take depositions, as required by the law regulating contests in election cases, and of this the sitting member claims the benefit. We therefore deduct one, which is estimated for Mr. Koontz in the above table.

No. 6. McClellan United States hospital, Philadelphia.—The sitting member contends that there is no certificate that more than ten were present. Still, ten names do appear in number and names of voters, page 106. The sitting member also refers to two returns of the judges, one certified by the prothonotary of Adams County, pages 93 and 94, and the other certified by the secretary of the commonwealth, pages 105 and 106, and says in his brief, "It is argued that two defective and illegal poll-books or election returns make a perfect and legal one." It has not been so argued before the committee. But it is the duty of the committee to approach as nearly as possible the ballot-box, and, by an examination of all the testimony, see that no legal voter is deprived of his just right to the elective franchise.

We find in the evidence referred to the committee by the House two properly certified papers, one, page 93, if taken by itself, defective, because the certificates of oaths are wanting, under the rule adopted by the majority of the committee respecting the hospital return in the *prima facie* case of *Koontz vs. Coffroth*, but, nevertheless evidence of what it contains, to wit, the poll-book and tally-paper, with signatures of the judges and clerks; the other, which is not in conflict with the first, poll-book, certificate of oath of officers and names and number of electors, signed by same judges and clerks. This makes the testimony complete. The last mentioned poll-book, &c., of itself, though informal, is substantially in compliance with the law, (see section 27 of soldiers' law as to informalities.) This committee and the House are not circumscribed by the formalities that regulate proceedings of a board of return judges. They can go to the ballot-box if necessary. In this instance, by looking at the two returns, no doubt remains of the fact that Mr. Koontz received three votes, which should be counted.

No. 7. One hundred and thirty-eighth Pennsylvania regiment, Front Royal, Virginia.—Here two companies voted together, B and G. Believing the decision of the House was correct on this point, when it sustained the majority report in the *prima facie* case of *Koontz vs. Coffroth*, the language of that report is here given, as follows: "The returns for Companies B and G, One hundred and thirty-eighth regiment, show that these two companies voted together at one poll, and having the same election officers, both judges and clerks. The law, section 2, directs that a poll shall be opened in each company, and that all electors belonging to such company, and within one mile of the quarters, shall vote at such



poll. The return shows officers of both companies participating in the election, indicating regular company organizations." Clearly a poll opened in each company would have caused two polls in two companies; whereas there was but one. But, while this was sufficient, on its face, to exclude the poll from count by the county return judges, and therefore could not be admitted for Mr. Koontz, on the *prima facie* case, the committee are still disposed and bound to respect the decision of the House in sustaining the decision of the committee, expressed in the majority report in said *prima facie* case, as follows: "How many of these objections might be removed by other evidence, on a full hearing upon the merits, the committee are not now called upon to say, nor do they know what the facts may be which relate to the validity of the elections so held, and as to which the returns appear to be so defective. But these returns, whether legal or not, are not proper to be considered on this investigation. When, on a contest on the merits, the facts may be fully developed, if any legal votes are found to have been omitted in the count, full and final justice may then be done both to the voters and to the respective claimants; but until such an investigation is had, the committee, on the question of the *prima facie* right to the seat, feel constrained to abide by those precedents and rules of law which experience has proved to be the safest guides in weighing and determining impartially questions of this nature."

This is now the "contest on the merits," and in developing "the facts" the committee find, from "other" legal testimony, pages 69 and 70, the depositions of witnesses, that the thirty-three (33) voters, as named in the returns, did vote; that they were all residents of Adams County; that "every man was required to have tax receipts, or prove their right to vote on age." This evidence of witnesses and the returns leave no room to doubt of the perfect fairness and honesty of the election. "It is recognized that every presumption ought to be in favor of fair popular elections." We must "look into their good faith and integrity; and if they are manifest, we are not to defeat the expression of the popular will because of some slip in the minor details of the election, which does not prevent our ready ascertainment of what that will truly is." (See Parsons's Select Cases, vol. 2, pages 103 and 105.) Therefore a portion of the committee are inclined to believe that justice requires that this vote should be counted, Koontz 32, Coffroth 1; while others of the committee are inclined to the opinion that the law is mandatory and requires that a poll should have been opened in each company, and therefore that it should not be counted. Whichever conclusion should be sustained by the House will not change the result in this case. It is contended here and elsewhere, by the sitting member, that if electors voted "on age," (that is, when between twenty-one and twenty-two years of age, and not required by the law of Pennsylvania, because of such age, to pay taxes,) the fact "on age" should appear on the poll-book.

That is required by the general election law, and the twenty-eighth section of the soldiers' law says, "All the provisions of the general laws of this State, so far as applicable, shall apply to all elections held under this act." That provision is not applicable to the soldiers' voting law because the forms are given for such voting in the law, and that form is dispensed with. Section twenty-seven also says that "informality" shall not invalidate such election.

But in this case the sitting member does not attempt to prove that any voter between twenty-one and twenty-two years of age did vote, and the law presumes that sworn election officers discharged their duties, until the contrary be shown.



No. 8. One hundred and eighty-fourth Pennsylvania regiment, Koontz 39, Coffroth 21.

The sitting member, in his answer, alleged that "said election is illegal and void, not being held in accordance with laws," and that "the persons voting were not qualified electors of the district." But he did not specify in what manner the laws were violated or electors not qualified. In his brief he seems to admit that all should be counted but one, as he says: "Rejected return of Company K, One hundred and eighty-fourth regiment, if counted, should be counted, Coffroth 21, Koontz 38."

In his argument he objected to the return because it contained a voter in Franklin County.

That objection cannot deprive the qualified voters of Adams County of their right, when a perfect return, as this is, is properly certified by the prothonotary. (Pages 89, 90, 91, 92, Mis. Doc. No. 117.)

But the certificate of prothonotary of Adams County is not evidence to us of vote in Franklin County. In the absence of other testimony we reject one vote from this return for Mr. Koontz, and count for Mr. Koontz 38, for Mr. Coffroth 21.

No. 9. Two hundred and second Pennsylvania regiment, White Plains.—In the argument, there was no objection made by sitting member to this count. In his brief there is no objection. On page 77, one judge only seems to have been sworn. This difficulty is removed by testimony of witnesses. (See pages 80, 81, and 82.) "The officers were all sworn." This poll is to be counted, Koontz 27, Coffroth 15.

No. 10. Twenty-first Pennsylvania cavalry, City Point, Virginia.—By a reference to pages 83 and 84 we see that the judges and clerks were sworn by Captain James Mickley, who was a qualified voter, but not a judge or clerk of the election who are authorized by the law to administer such oath.

The sitting member claims this return should be deducted, because Captain Mickley was not an election officer. The soldiers' law, section fifth, says "the oath may be administered by judges or clerks." Others may administer. But Captain Mickley not being a public officer, had no legal right to administer the oath. But the judges and clerks became, by taking the oath in good faith, public officers de facto, for the purpose of conducting the election, and their acts are valid. This principle is laid down in second Kent, page 339: "In the case of public officers who are such de facto, acting under color of office, by an election or appointment not strictly legal, or without having qualified themselves by the requisite tests, or by holding over after the period prescribed for a new appointment, their acts are held valid as respects the rights of third persons who have an interest in them, and as concerns the public, in order to prevent a failure of justice."

The decision in the thirty-sixth Congress, (see Bartlett's Election Cases, p. 313,) in the case of Blair vs. Barret, is also in point. We find the following language in the report of the majority, which was sustained: "There was no evidence" (referring to certain precincts) "returned with the return of votes, now before the committee in any shape at the hearing, that the judges of election were sworn." "Had it appeared from the evidence that the election had been fairly conducted at these precincts, and there were no traces of fraud, no taint of the ballot-box, the committee would not have been willing to have recommended a rejection of these polls. The honest electors should not be disfranchised and their voice stifled from a mere omission of the officers of election to take the oath of office." In the case before us there was not an omission, as we have seen. The evidence is, that "the election was conducted very



strictly and fairly; inquiry was made as to age and payment of taxes. Those whom we were not positively certain were of age were sworn. The voters presented certificates showing the payment of tax within two years," &c. (See pages 87, 88, and 89.)

We are therefore clearly of the opinion that this poll should be counted.

No. 11. Two hundred and tenth Pennsylvania regiment, Koontz 19, Coffroth 9.—This is not objected to in argument of sitting member or in his brief, but is there counted.

It was rejected by return judges because the certificate of oath does not appear, although it appears in the caption of the poll-book, and an oath is signed by the judges and clerks, and the legal certificate of the prothonotary appears, pages 71 and 74. But all defects are cured by testimony of Edward Reece, page 75, "all were sworn." This should be counted Mr. Koontz 19, and Mr. Coffroth 9.

The district in Adams County composed of the townships of Liberty and Hamilton. The testimony of Mr. Wolf, page 212, is clear that, in the computation of the home vote for Adams County, this district was counted 155 for Mr. Coffroth, and 163 for Mr. Koontz.

In argument the sitting member, Mr. Coffroth, claimed that the law required each township to vote, each composing a district, and therefore that this whole vote should be rejected. The contestant produced the law organizing these two townships into an election district. (See Smith's Pennsylvania Laws, vol. 3d, page 449, section 5th, of "An act to erect the county of Adams into an election district." The count should not, therefore, be rejected and deducted.

But, on the other hand, the contestant claims two additional votes because the certificate of election of the judges and inspectors of this district, properly certified by the prothonotary of Adams County, page 113, shows that Mr. Koontz received 165 votes, being two more than were counted.

The two votes should be given to Mr. Koontz.

The sitting member admitted that one Hezekiah Hite, a minor, voted for him. \* \* \* We therefore deduct one from Mr. Coffroth.

#### PAUPERS.

The contestant claimed that the votes of seventeen paupers in Bedford County and sixteen in Adams County should be rejected, and taken from the sitting member, because, first, as before stated, paupers have no right to vote; and second, because Bedford County voters were non-residents of the district in which they voted.

The committee cannot reject the seventeen in Bedford County, because, although non-residents, the contestant has failed to prove that these votes were counted.

The committee cannot see why the sixteen in Adams County should be deducted from the count of the sitting member. Each State frames its own laws for the maintenance and care of its poor. The laws provide protectors for the poor, who, "by reason of age, disease, infirmity, or other disability," become unable to work. With regard to the exercise of the elective franchise by such, the laws of Pennsylvania are silent. As they are not expressly deprived of the right, we cannot see why the unfortunate, provided for by the public, may not vote as well as if provided for by a parent, or a son—certainly not until the authorities of Pennsylvania shall have decided for themselves the law, for which they have had frequent opportunities; therefore we here make no deductions from the



count of the sitting member. Before proceeding to consider the claims of sitting member for deductions of votes from Mr. Koontz, we recapitulate:

	Koontz. Coffroth.	
Give uncounted votes as in above table .....	258	99
	Koontz.	
Deduct from No. 1, Company H, Two hundred and eighth regiment .....	1	
Deduct from No. 5, Cuyler United States Hospital. ....	1	
Deduct from No. 8, Company K, One hundred and eighty-fourth regiment .....	1	
	—	3
	255	
Deduct vote of Hezekiah Hite from Mr. Coffroth .....		1
		98
Add uncounted votes in district composed of Liberty and Hamilton Townships .....	2	
	257	
Deduct uncounted vote of Mr. Coffroth. ....	98	
Leaves a majority of uncounted votes for Mr. Koontz .....	159	

Deductions claimed by sitting member, not considered above.

Evidence introduced by sitting member commences page 139 of Mis. Doc. No. 117.

#### ADAMS COUNTY.

On page 212, Henry G. Wolf, a clerk for return judges, testifies (in his own language) that, "this paper, now before me, is my tally-list of the votes received and counted by the judges, including," &c. It is not attempted to put that paper in evidence, so clearly unauthorized is such a tally-list of a clerk. Section 63 of the election laws of Pennsylvania, page 378 of Purdon's Digest, requires returns to be signed by all judges present, and attested by the clerks.

This clerk testifies, "among votes counted were the following: One vote for W. H. Koontz, from Camp Cadwalader, Philadelphia, (paper A;) two votes for A. H. Coffroth, and six votes for W. H. Koontz, from independent company of Pennsylvania volunteers, at McConnellsburg, Pennsylvania, (papers B, C, and D;) one vote for W. H. Koontz, from Company F, Two hundred and tenth regiment Pennsylvania volunteers, at Camp Squirrel Hill Pond, Virginia, (paper E.)" He speaks from his own tally-list, which does not appear in the record, and remarks: "the board were unanimous in agreeing to count the votes mentioned in papers A, B, C, D, E." Neither are these papers A, B, C, D, E, made a part of the evidence, although we find what purports to be such papers in Mis. Doc. No. 117.

The attempt is then made, by the sitting member, to exclude votes mentioned in papers so marked, purporting to be poll-books, returns, &c., from the military companies mentioned.

The witness Wolf does not swear these papers are copies of the papers before the return judges. We then look at these papers themselves. A is certified to be "true copies of the poll-book, tally-paper, and return of the election as the same remains on file, May 3, 1866."



There is no certificate that the copy of certificate of oath of judges and clerks is a true copy, as on file. All certified to may be true, and yet the whole truth may not appear. There is no evidence that this or any of those papers are copies of the papers which were before the return judges. The presumption is that they are not. And as it is directly in point, we will cite, as authority, the report of this committee in the case of *Fuller vs. Dawson*, in which the following language is used:

"The prothonotary certifies that the transcript given on pages 68 and 69 of the second book is a correct copy of the poll-book, tally-list, and certificate of the return of the election, but makes no allusion to the certificates of oaths in the case. If these votes were in fact canvassed, and the only evidence upon which the canvas was made was such as is found in this transcript, it is clear that, under the rule adopted by the majority of the committee respecting the hospital returns in the case of *Koontz vs. Coffroth*, these votes ought not to have been counted, for the certificates of oaths are entirely wanting. But it is not shown affirmatively that this was the only evidence, and the transcript raises no such presumption, because the prothonotary's certificate does not exclude the idea that perfect certificates may have been on file in his office."

Papers B, C, D, and E are in like condition. We cannot, therefore, upon such evidence, or rather upon no evidence, deduct the votes of these camps and companies from the count of the contestant; when, too, no attempt is made by the sitting member to prove illegal votes or fraud in voting.

#### STUDENTS.

The sitting member claims that 13 votes should be deducted from the count of Mr. Koontz for non-resident students who voted at Gettysburg. An examination of testimony, pages 202, 203, 204, 205, and 213 will show that but one is proved to have voted for Mr. Koontz who did not consider Gettysburg his residence. But there is no evidence that the vote was counted, and the evidence is that only three of the thirteen voted for Mr. Koontz. Therefore no deduction is made.

#### BEDFORD COUNTY.

The sitting member claims that of the soldiers' returns, counted as he alleged, there should be deducted Koontz 63 and Coffroth 38. For proof that these returns were included in the count, O. E. Shannon's testimony is referred to, pages 24 and 25, who testified that the aggregate is 318 for Mr. Koontz and 94 for Coffroth, and that company H, Two hundred and eighth regiment Pennsylvania volunteers, and barracks No. 1 were not counted. Then, in order to show that McClellan hospital, companies D, E, and F, One hundred and thirty-eighth regiment; company C, Two hundred and fifth regiment; company C, One hundred and tenth regiment; company I, One hundred and ninety-first regiment, and depot field hospital were included in the count, he refers to the testimony of said Shannon, the prothonotary, page 195, who swears that votes referred to in certain papers were counted by the return judges. But it will be perceived that the evidence produced as to the papers before the return judges is not legal or satisfactory.

While the votes referred to may have been all counted, there is no evidence that the papers produced were counted, or that other and perfect returns were not before the return judges. An inspection of the returns referred to by this prothonotary, page 195, will disclose the fact that a like attempt has been made for this county, to prove illegal returns that were made in Adams County. For example see No. 21, A, poll-book for McClellan hospital. The attempt is made to deduct 4 votes from the count of Mr. Koontz, because there is no return signed by the



judges. Indeed, there is likewise no certificate of oath; still it is all the prothonotary certifies it to be, or so may be a copy of a poll-book. But there is no evidence that this was the paper before the return judges, or that they may not have had before them other and perfect papers.

Such is the case with every paper, with slight changes, on which the sitting member claims deductions in this county from the count in favor of Mr. Koontz.

This prothonotary testifies that returns "from Nos. 44 to 53 are certified copies of the returns sent to me by the secretary of the commonwealth, as shown by my certificate to the return judges." He produces as evidence a certified copy of a certificate which he had made to the return judges, which first certificate he made without authority of law. Instead of certified copies of returns, as required by section 18 of soldiers' law, he took upon himself to make a tabular statement, (at least this is what is certified to the committee,) with a certificate as to computation of votes for each candidate. The certificate to this computation produced to the committee reads:

I, O. E. Shannon, prothonotary of said county, (Bedford,) certify that the foregoing is a full and true copy of my certificate to the return judges of election for Bedford County, dated 28th October, 1864, and also of the tabular statement accompanying the same.

Witness my hand and official seal, June 20, A. D. 1866.

O. E. SHANNON, *Prothonotary*.

The sitting member says, "these votes are all counted;" but the presumption is that they were not counted upon such a paper, but that they were counted, if counted at all, upon proper and legally certified copies of returns.

Certified copies of returns before the judges should have been presented to the committee, and were not.

The statement of the sitting member in his brief, page 1, is erroneous, when he says: "This certificate of Mr. Shannon was received and recognized by the Committee of Elections as evidence at the hearing of the *prima facie* case (Koontz vs. Coffroth) being brought before the committee by the contestant."

The majority in their report distinctly rejected it, in the following language:

Many papers have been referred to the committee which, on this hearing, are not evidence for any purpose.

From the legal certificates and returns of the district and county boards of return judges in this case nothing appears in relation to the rejection of any soldiers' votes; and those who allege such rejection are compelled to look outside of these certificates and returns, and resort to papers and statements which are not legitimate evidence on this investigation, and which, without further proof, would few, if any of them, be evidence of themselves on the hearing of a contest on the merits.

And, unauthorized and illegal as this tabular statement is, there is no evidence that it was before the return judges.

It may also be properly remarked that the sitting member had notice, on the hearing in the *prima facie* case, that such papers were not admissible as evidence, and it is to be presumed that copies of the returns before the return judges would have been procured, could they have been made available for his purposes. As the votes of the nine soldiers named in brief of sitting member for "Bedford County" can only be deducted by a process of reasoning based upon papers totally unauthorized by law, it is useless to notice them further.

The committee can make no deductions from the vote in Bedford County. But before passing to the next county, it may be well to look briefly at the testimony to which the sitting member refers the committee in his brief, in order to show that soldiers were at the polls in South-



ampton township for the purpose of "detering citizens from voting who wished to vote for Mr. Coffroth."

It is claimed that some twenty or thirty votes should be counted for sitting member because of such military interference. The sitting member is unfortunate in selecting the law to sustain this: Purdon's Digest, page 383, section 10, to wit: "No body of troops in the army of the United States or of this commonwealth shall be present, either armed or unarmed, at any place of election within this commonwealth during the time of such election: *Provided*, That nothing herein contained shall be so construed as to prevent any officer or soldier from exercising the right of suffrage in the election district to which he may belong, if otherwise qualified according to law."

Nothing is to prevent any soldier from exercising the right of suffrage in his own district.

In this case the soldiers, six to ten, were in their own district; at least there is nothing to show they were not, and there is no evidence or reason to presume that they were at the polls as an organized detachment. Their guns were stacked at a distance.

The testimony, also, is unfortunate for the sitting member, as it clearly shows that the "citizens" referred to were deserters, who were, and had been, avoiding the officers of the law, were avoiding their own homes, and hiding in the mountains, continually startled at the sound of their own voices.

For most of them it is claimed they would have voted for Mr. Coffroth, because they "would have voted the democratic ticket."

It is unnecessary to refer further to the law.

A few quotations will be sufficient from the testimony of the sitting member. Page 184, Laban Johnson swears: "Soldiers said they were there for the purpose of taking any conscripts that came there to vote; there was a right smart company of soldiers there, ten or a dozen; all the conscripts were deprived from voting except one man, who voted a few minutes before the soldiers came; the soldiers said if they had got there a few minutes sooner he would not have got away. Gideon Smith and others were not permitted to come in the yard that day. Gideon Smith (cross-examined) and others didn't offer to vote, and didn't come in sight of the window that day, nor did any other conscript except the one that voted. The soldiers did not arrest anybody at the polls that day. I don't know that there were men deprived of their votes except from what they told me after the election. They said they saw the soldiers there, and knew that they would be taken up. They calculated they would be taken up. The politics of these men was democratic, and those that I saw said they were going to vote for Coffroth."

Isaac Jiams, on page 184, swears: "There was a company of conscripts about two hundred yards from the window; I don't know that they went any nearer to offer to vote. They could see the soldiers, and they were afraid to go to vote. They had been told by different ones that if they went to vote they would be picked up."

Richard M'Mullan, page 185, swears: "He had been drafted some time before; he did not report; the soldiers arrested him on Saturday before the election; he left them; they were at his house searching for him on morning of the election; he understood there were soldiers at the polls to arrest all deserters; he did not on that account go to the polls; if he had gone he would have voted for A. H. Coffroth; that he was six or seven miles from the polls, and not at home on that day."

A. J. Reighard, page 186, swears: "He didn't come any nearer than



eight or ten miles to the election house that day; he was afraid of the soldiers, because he had been drafted; he would have voted the democratic ticket."

John Groman, page 186, swears the same in substance.

Adam H. Earnest, page 187, swears: "He was about ten miles from the polls; didn't come nearer; he would have come in, he guesses, if there had been no soldiers there; he would have voted the democratic ticket."

Peter A. Miller, pages 188 and 189, swears: "I was across between the top and foot of the mountain, about six miles from the election; I didn't go any nearer the polls; I didn't offer my vote, because I was afraid to go there; I was a conscript and hadn't reported; I was drafted in 1863, in August, and had managed to escape the officers all that time; I would have been apt to have voted for Coffroth, if I had gone, most assuredly; I am a democrat in politics."

Henry Stichler, page 189, swears: "I desired to vote. I was afraid that the fellows with the blue clothes on, the soldiers, would arrest me, and that was the reason I didn't vote. On the day of election I was about my father's house, shoemaking a little sneakingly. I was five miles off. I was drafted in June, and was trying to keep out of the way; that was my game; the soldiers caught me at last; I would have voted for Coffroth."

John Oldham, page 189, swears: "Soldiers had been after me on the Sunday previous, but did not get me. If I had voted I would have voted for Coffroth. I have always voted the democratic ticket, and always will."

The committee leave this point without further comment.

No vote should be deducted from the count of Mr. Koontz in this county.

#### SOMERSET COUNTY.

The sitting member claims deductions of votes from the count for the contestant. A like effort is made as in Adams and Bedford Counties. Papers are introduced which are not legal evidence, and there is no proof that even they were before the return judges.

What purport to be certified copies of returns are introduced, which, from appearances, are garbled: here, a return not signed by the judges; there, no judges or return; here, no judges sworn; there, no certificate of oath. And yet they may be all they are certified to be, the prothonotary uniformly certifying "a true and correct copy of the original," without the addition of such a word as return, or poll-book, or tally-list, or certificate of oath. One-half may have been omitted, and yet the prothonotary's certificate be true; and the committee repeat there is no evidence to show that these were before the return judges. The only attempt at evidence that they were is made as follows, to wit: Herman L. Baer, a commissioner to take depositions, pages 146 and 147, says: "The following copies of record were produced before me by the counsel of A. H. Coffroth, esq;" and among others described is "a certified copy of the tally-paper of the clerks to the return judges for October election in 1864, as far as relates to Congress, as on file in the prothonotary's office, Somerset County, Pennsylvania." That tally-paper, pages 178 and 179, is referred to for proof that districts, companies, and camps therein named were counted; and then the committee are asked to infer that the incomplete papers already spoken of shall be regarded, without evidence, as the returns that were before the return judges.

That tally-paper, which is the foundation of the claim of the sitting



member for the rejection of votes, is not a legal paper, because, first, (see Purdon's Digest, page 378, section 63,) it is required "the clerks shall make out a fair statement, &c., which shall be signed by said judges and attested by the clerks," and this appears as a certified copy signed alone by the clerks; and, secondly, (see sections 63 and 64 of the same law, Purdon, page 378,) it would not be evidence even if signed by the judges and attested by the clerks, because it appears certified by a county prothonotary, when there is no authority for depositing any return or statement of a board of a county composing a part of a congressional district in the office of the prothonotary.

It is, therefore, clearly inadmissible; if possible, more objectionable than a similar paper introduced by the contestant in the case of *Fuller vs. Dawson*, because it was signed by one judge, the presiding judge. Yet it was rejected; and being in point, the committee insert, from the report in the case of *Fuller vs. Dawson*, the following:

It is maintained that the return judges erroneously counted Mr. Dawson's vote three instead of two in the case of Company E, One hundred and fifth regiment. It is true that he received only two of these votes, one of the three having been cast for James H. Hopkins. But there is no proof that the three votes were counted for him except in the table on page 390 of the second book. That table purports to be a transcript of a paper signed, not by all nor by a majority of the return judges, but by "James C. Clark, president of the meeting of return judges," deposited in the office of the prothonotary of Westmoreland County, and by him certified.

In section 63 of the general election law, (Purdon, page 378,) it is provided that when, as in the case before us, two or more counties compose a congressional district, "the clerks shall make out a fair statement of all the votes" given in the county for the several candidates, "which shall be signed by said judges and attested by the clerks, and one of the said judges shall take charge of such certificate, and shall produce the same at a meeting of one judge from each county," at a place within the district designated by law, on the fourth Friday after the election.

This paper, exhibited on page 390 of the second book, is inadmissible, because only signed by one of the judges; but it would not be evidence before the committee even if signed by all the county judges, for the reason that when a congressional district is composed of two or more counties there is no authority for depositing any return or statement of the county board in the office of the prothonotary.

Upon such papers the committee can make no deductions of votes. With same papers for a foundation, the committee are asked to deduct from Mr. Koontz 22 votes of voters who, it is claimed by sitting member, had not paid tax; and for proof, a clerk to county commissioners, Jacob Neff, pages 145, 146, and 148, produces a paper, "A," which he testifies "is the list I made out," to show that certain persons were not assessed.

While the persons may have voted "on age," if indeed they did vote, or if indeed their votes were counted, the committee reject such a paper by the argument of the sitting member himself, who offers it, and in doing so extract the following from his brief in this case. Claiming these deductions, he says: "Mr. Neff furnished a list, and swears these names are not to be found on the assessments." Immediately following, in his brief, to destroy the testimony of a voter and witness, page 116, he says, "he paid soldier taxes to Isaac Simpson, treasurer. The treasurer keeps a record of all taxes received. This record could have been produced by the present treasurer, if the men in Mr. Neff's list had paid their taxes." The committee agree that record testimony should be produced when it can be had; neither can they see why, if a treasurer's record should be produced, an assessor's should not.

This finishes Somerset County, and the committee make no deductions from former count.

#### FRANKLIN COUNTY.

As in Bedford County, the sitting member claims that certain soldiers



returns should be deducted, and the proof of the defects in the returns, as claimed, and of their having been counted by the return judges, is of the same character with that of Bedford County, and should be wholly rejected.

Nothing is, or has been, before the committee to enable them to decide upon the legality of the returns that were before the return judges. It is impossible to say what were counted or before them.

Notwithstanding a county return judge, William D. Guthrie, page 238, and John R. Orr, an attorney-at-law, and a clerk to the county board, and George O. Seilhamer, deputy prothonotary, were all sworn, there is no evidence as to what returns were certified to and before the return judges and counted. Mr. Guthrie merely swears: "All returns of soldiers' vote presented us by the prothonotary were counted. I cannot identify the poll-books now presented."

All presented were counted, but no evidence is produced as to what were presented.

Mr. Orr swears, page 238: "Quite a number were presented; these were counted."

The deputy prothonotary swears, page 239: "There were sundry returns; all these returns were laid before the board."

The record testimony, the certified copies of the returns placed before the return judges, if any there were, should have been before the committee, and were not, and no cause is assigned for their absence.

The committee cannot therefore make any deductions from the count of this county.

#### FULTON COUNTY.

The like attempt is made in this county as in others, to cause deduction of votes upon introduction of papers wholly inadmissible. It is useless to make the same argument again. (See pages 47 to 57, and especially 54.)

The conclusion to which the committee have arrived is:

From majority of uncounted votes for Mr. Koontz, as shown by table last above named .....	159
Take the majority for Mr. Coffroth, as appears in the official count. ....	88
	<hr/>
Leaves a majority for Koontz of .....	71
Should any doubt the correctness of counting the vote of Companies B and G, One hundred and thirty-eighth regiment Pennsylvania volunteers, where the two companies voted together, a deduction of Mr. Koontz's majority at that poll 32—1 .....	31
	<hr/>
Gives a majority for Mr. Koontz of .....	40
	<hr/> <hr/>

The committee therefore recommend the adoption of the following resolutions:

*Resolved*, That Alexander H. Coffroth is not entitled to a seat in this House, as a representative from the sixteenth (16th) district of Pennsylvania in the thirty-ninth Congress.

*Resolved*, That William H. Koontz is entitled to a seat in this House, as a representative from the sixteenth district of Pennsylvania in the thirty-ninth Congress.



[From election law of Pennsylvania, Purdon's Digest, page 378.]

SECTION 63. When two or more counties shall compose a district for the choice of a member or members of the senate of this commonwealth, or of the House of Representatives of the United States, or of this commonwealth, the judges of the election in each county having met as aforesaid, the clerks shall make out a fair statement of all the votes which shall have been given at such election within the county, for every person voted for, as such member or members, which shall be signed by said judges, and attested by the clerks; and one of the said judges shall take charge of such certificate, and shall produce the same at a meeting of one judge from each county, at such place in such district as is or may be appointed by law for the purpose, which meeting shall be held on the seventh day after the election.

SECTION 64. The judges of the several counties having met as aforesaid, shall cast up the several county returns and make duplicate returns of all the votes given for such office in said district, and of the name of the person or persons elected, and one of said returns for each office shall be deposited in the office of the prothonotary of the court of common pleas of the county in which they shall meet, and the other shall be by said judges deposited in the nearest post office, sealed and directed to the secretary of the commonwealth, in the manner directed in parts two and three of the eighteenth section of this act.

## LAWS REGULATING ELECTIONS BY SOLDIERS IN MILITARY SERVICE.

### *Constitution of Pennsylvania, Article III—of elections.*

SECTION 1. In elections by the citizens, every white freeman of the age of twenty-one years, having resided in this State one year, and in the election district where he offers to vote ten days immediately preceding such election, and within two years paid a State or county tax, which shall have been assessed at least ten days before the election, shall enjoy the rights of an elector; but a citizen of the United States, who had previously been a qualified voter of this State, and removed therefrom and returned, and who shall have resided in the election district, and paid taxes as aforesaid, shall be entitled to vote after residing in the State six months: *Provided*, That white free-men, citizens of the United States, between the ages of twenty-one and twenty-two years, and having resided in the State one year, and in the election district ten days, as aforesaid, shall be entitled to vote, although they shall not have paid taxes.

SEC. 2. All elections shall be by ballot, except those by persons in their representative capacities, who shall vote *viva voce*.

SEC. 3. Electors shall in all cases, except treason, felony, and breach or surety of the peace, be privileged from arrest during their attendance on elections, and in going to or returning from them.

### *Amendment finally adopted in the year 1864.*

SEC. 4. Whenever any of the qualified electors of this commonwealth shall be in any actual military service under a requisition from the President of the United States, or by the authority of this commonwealth, such electors may exercise the right of suffrage in all elections by the citizens, under such regulations as are or shall be prescribed by law, as fully as if they were present at their usual place of election.

### *Act of assembly of August 25, 1864.*

AN ACT to regulate elections by soldiers in actual military service.

SECTION 1. *Be it enacted by the senate and house of representatives of the commonwealth of Pennsylvania in general assembly met, and it is hereby enacted by the authority of the same,* That whenever any of the qualified electors of this commonwealth shall be in any actual military service, under a requisition from the President of the United States, or by the authority of this commonwealth, and as such absent from their place of residence on the days appointed by law for holding the general or presidential elections within this State, or on the days for holding special elections to fill vacancies, such electors shall be entitled at such times to exercise the right of suffrage as fully as if they were present at their usual places of elections, in the manner hereinafter prescribed, and whether, at the time of voting, such electors shall be within the limits of this State or not; and the right of voting shall not be affected, in any manner, by the fact of the voter having been credited to any other locality than the place of his actual residence by reason of the payment to him of local bounty by such other locality.

SEC. 2. A poll shall be opened in each company, composed, in whole or in part, of Pennsylvania soldiers, at the quarters of the captain, or other officer thereof, and all electors belonging to such company who shall be within one mile of such quarters on the day of election, and not prevented by orders of their commanders, or proximity of the enemy, from returning to their company quarters, shall vote at such poll, and at no



other place; officers other than those of a company, and other voters detached and absent from their companies, or in any military or naval hospital, or in any vessel, or navy yard, may vote at such other polls as may be most convenient for them; and when there shall be ten or more voters at any place who shall be unable to attend any company poll or their proper place of election as aforesaid, the electors present may open a poll at such place as they may select and certify in the poll-book, which shall be a record of the proceedings at said election, substantially in manner and form as hereinafter directed.

SEC. 3. The polls shall be opened as early as practicable on said day and remain open at least three hours, and if necessary, in the opinion of the judges of the election, in order to receive the votes of all the electors, they may keep the polls open until seven o'clock in the afternoon of said day; proclamation thereof shall be made at or before the opening of the polls, and one hour before closing them.

SEC. 4. Before opening the poll, on the day of election, the electors present at each of the places aforesaid shall elect, *viva voce*, three persons present at the time, and having the qualifications of electors, for the judges of said election, and the judges so elected shall then appoint two of the persons present, who shall be qualified to act as clerks of said election; and the judges shall prepare boxes, or other suitable receptacles, for the ballots.

SEC. 5. Before any votes shall be received, said judges and clerks shall each take an oath or affirmation that he will perform the duties of judge or clerk (as the case may be) of said election according to law, and to the best of his abilities, and that he will studiously endeavor to prevent fraud, deceit, or abuse in conducting the same, which oath or affirmation any of the said judges or clerks so elected or appointed may administer to each other; and the same shall be in writing, or partly written and partly printed, and signed by said judges and clerks, and certified to by the party administering the same, and attached to or entered upon the poll-book, and there signed and certified as aforesaid.

SEC. 6. All elections shall be by ballot; and the judges of elections may, and upon challenge of any voter shall, examine under oath or affirmation the applicant to vote, (which oath or affirmation any of said judges may administer,) in respect to his right to vote and his qualifications to vote in the particular ward, precinct, city, borough, township, or county of this State in which he claims residence; and before receiving any vote the judges, or a majority of them, shall be satisfied that such applicant is a qualified voter of such place.

SEC. 7. Separate poll-books shall be kept and separate returns made for the voters of each city or county; the poll-book shall name the company and regiment, and the place, post, or hospital in which such an election is held; the county and township, city, borough, ward, precinct, or election district of each voter shall be indorsed opposite his name on the poll-books; each clerk shall keep one of said poll-books; so that there may be a double list of voters.

SEC. 8. Each ticket shall have written or printed, or partly written and partly printed thereon, the names of all the officers which may properly be voted for at said election for which the said elector desires to vote.

SEC. 9. That the judges to whom any ticket shall be delivered shall, upon the receipt thereof, pronounce with an audible voice the name of the elector; and if no objection is made to him, and the judges are satisfied that said elector is a citizen of the United States and legally entitled, according to the constitution and laws of this State, to vote at said election, shall immediately put said ticket in the box, or other receptacle therefore, without inspecting the names of persons voted for; and the clerks shall enter the name of the elector on the poll-book of his county, ward, precinct, city, borough, or township, and county of his residence, substantially in pursuance of the form herein-after given.

SEC. 10. At the close of the polls the number of voters shall be counted and set down at the foot of the list of voters and certified and signed by the judges and attested by the clerks.

SEC. 11. After the poll-books are signed, the ballot-box shall be opened and the tickets therein contained shall be taken out, one at a time, by one of the judges, who shall read distinctly, while the ticket remains in his hand, the name or names therein contained for the several officers voted for, and then deliver it to the second judge, who shall examine the same and pass it to the third judge, who shall string the vote for each county upon a separate thread and carefully preserve the same; the same method shall be pursued as to each ticket taken out until all the votes are counted.

SEC. 12. Whenever two or more tickets shall be found deceitfully folded or rolled together, neither of such tickets shall be counted; and if a ticket shall contain more than the proper number of names for the same office, it shall be considered fraudulent as to all the names designated for that office, but no further.

SEC. 13. As a check in counting, each clerk shall keep a tally-list for each county from which votes shall have been received, which tally-list shall constitute a part of the poll-book.



SEC. 14. After the examination of the tickets shall be completed, the number of votes for each person in the county poll-books, as aforesaid, shall be enumerated, under the inspection of the judges, and set down as hereinafter provided, in the form of the poll-book.

SEC. 15. The following shall be substantially the form of the poll-books to be kept by the judges and clerks of the election, filling in the blanks carefully:

"Poll-book of the election held on the second Tuesday of October, one thousand eight hundred and ———, (or other election day, as the case may be,) by the qualified electors of ——— county, (or city,) State of Pennsylvania, in Company ———, of the ——— regiment of Pennsylvania volunteers, (or as the case may be,) held at (naming the place, post, or hospital.) A B, C D, and E F being duly elected as judges of said election, and J K and L M being duly appointed as clerks of said election, were severally sworn or affirmed, as per certificates herewith returned.

"Number and names of the electors voting, and their county, city, borough, township, ward, or precinct of residence:

"No. 1, A B, ——— county of ———, township of ———.

"No. 2, C D, ——— county of ———, township of ———.

"It is hereby certified that the number of electors for ——— county, Pennsylvania, voting at this election, amounts to ———.

"A B,

"C D,

"E F,

*"Judges of Election."*

"Attest:

"J K,

"L M, *Clerks.*"

#### FORM OF CERTIFICATE OF OATH OF JUDGES AND CLERKS.

"We, A B, C D, and E F, judges of this election, and J K and L M, clerks thereof, do each severally swear (or affirm) that we will duly perform the duties of judges and clerks of said election, severally acting as above set forth, according to law and to the best of our abilities, and that we will studiously endeavor to prevent fraud, deceit, or abuse in conducting the same.

"A B,

"C D,

"E F, *Judges.*

"J K,

"L M, *Clerks.*

"I hereby certify that C D, E F, judges, and J K and L M, clerks, were, before proceeding to take any votes at said election, first duly sworn, or affirmed, as aforesaid. Witness my hand, this ——— day of ———, anno Domini one thousand eight hundred and ———.

*"A B, Judge of Election."*

"I certify that A B, judge aforesaid, was also so sworn (or affirmed) by me. Witness my hand the date before written.

*"J K, Clerk of Election."*

SEC. 16. A return in writing shall be made in each poll-book setting forth, in words at length, the whole number of ballots cast for each office, (except ballots rejected,) the name of each person voted for, and the number of votes given to each person, for each different office; which return shall be certified as correct, signed by the judges, and attested by the clerks; such return shall be substantially as follows:

"At an election held by the electors of Company ———, of the ——— regiment of Pennsylvania soldiers, at (naming the place where the election is held) there were (naming the number in words, at length) ——— votes cast for the office of governor, of which A B had ——— votes, C D had ——— votes. For senator, ——— votes were cast; of which E F had ——— votes, G H had ——— votes. For representatives, ——— votes were cast; of which J K had ——— votes, L M had ——— votes." And in the same manner as to any other officers voted for.

At the end of the return, the judges shall certify in substance as follows, giving, if officers, their rank and number of their regiment; if privates, the number of their regiment and company, viz:

"A return of the election, held as aforesaid, on the ——— day of ———, anno Domini one thousand eight hundred and ———.

"A B, captain Company A, one hundred and thirty-first regiment Pennsylvania volunteers.



"C D, Company A, one hundred and thirty-first regiment Pennsylvania volunteers.

"E F, Company A, one hundred and thirty-first regiment Pennsylvania volunteers.

"\_\_\_\_\_  
"Judge of Election.

"Attest :

"J K,  
"L M, Clerks."

SEC. 17. After canvassing the votes, in manner aforesaid, the judges shall put in an envelope one of the poll-books, with its tally-list, and return of each city or county, together with the tickets, and transmit the same, properly sealed up and directed, through the nearest post office, or by express, as soon as possible thereafter, to the prothonotary of the court of common pleas of the city or county in which such electors would have voted if not in the military service aforesaid, (being the city or county for which the poll-book was kept,) and the other poll-book of said city or county, inclosed in an envelope, and sealed as aforesaid, and properly directed, shall be delivered to one of the commissioners hereinafter provided for, if such commissioner calls for the same in ten days, and if not so called for the same shall be transmitted by mail or by express as soon as possible thereafter, to the secretary of the Commonwealth, who shall carefully preserve the same, and on demand of the proper prothonotary deliver to said prothonotary, under his hand and official seal, a certified copy of the return of votes so transmitted to and received by him, for said city or county, of which the demandant is prothonotary.

SEC. 18. It shall be the duty of the prothonotary of the county to whom such returns shall be made to deliver to the return judges of the same county a copy, certified under his hand and seal, of the return of votes so transmitted to him by the judges of the election, as aforesaid, or as officially certified by the secretary of the Commonwealth as aforesaid to said prothonotary.

SEC. 19. The return judges of the several counties shall adjourn to meet at the places now directed by law, on the third Friday after any general or presidential election, for the purpose of counting the soldiers' vote; and when two or more counties are connected in the election, the meeting of the judges from each county shall be postponed in such case until the Friday following.

SEC. 20. The return judges, so met, shall include in their enumeration the votes so returned, and thereupon shall proceed in all respects in the like manner as is provided by law in cases where all the votes shall have been given at the usual place of election: *Provided*, That the several courts of this Commonwealth shall have the same power and authority to investigate and determine all questions of fraud or illegality, in relation to the voting of the soldiers, as are now vested in said courts with regard to questions of fraud and illegality arising from the voting of persons not in military service, under the present laws relating thereto.

SEC. 21. In elections for electors of President and Vice-President of the United States, it shall be the duty of the secretary of the Commonwealth to lay before the governor all returns received by him from any election as aforesaid, who shall compare the same with the county returns, and add thereto all such returns as shall appear on such comparison not to be contained in said county returns, in every case where said military returns for such counties shall have been received by said secretary at a period too late for transmitting them to the proper prothonotary in time for the action of the judges of the said counties.

SEC. 22. All said elections shall be subject to contest in the same manner as is now provided by law; and in all cases of contested elections all legal returns which shall have been *bona fide* forwarded by said judges in the manner hereinbefore prescribed shall be counted and estimated, although the same may not have arrived or been received by the proper officers to be counted and estimated in the manner hereinbefore directed, before issuing the certificates of election to the persons appearing to have a majority of the votes then received, and the said returns shall be subject to all such objections as other returns are liable to when received in due time.

SEC. 23. It shall be the duty of the secretary of the Commonwealth to cause to be printed a sufficient number of copies of this act, with such extracts from the general election law as shall be deemed important to accompany the same, and blank forms of poll-books, with tally-lists and returns, as prescribed in this act, which, with the necessary postage stamps to defray expenses and postage on returns, shall, in sufficient time before any such election, be forwarded by said secretary, at the expense of the Commonwealth, by commissioners, or otherwise, as shall be deemed most certain to insure delivery thereof to the captain or commanding officer of each company, or, in case of detached voters, to the officer having charge of the post or hospital, who shall retain the same until the day of election, and then deliver the same to the judges elected, as provided in this act: *Provided*, That no election shall be invalidated by reason of the neglect or failure of the said secretary to cause the delivery of said poll-books to the proper persons as aforesaid.



SEC. 24. That for the purpose of more effectually carrying out the provisions of this act, the governor shall have power to appoint and commission, under the great seal of the Commonwealth, such number of commissioners having the qualifications of an elector in this State as he shall deem necessary, not exceeding one to each regiment of Pennsylvania soldiers in the service of this State or of the United States, and shall apportion the work among the commissioners, and supply such vacancies as may occur in their number. Such commissioners, before they act, shall take and subscribe an oath or affirmation and cause the same to be filed with the secretary of the Commonwealth, to the following: "I, \_\_\_\_\_, appointed commissioner under the act to regulate elections by soldiers in military service, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Commonwealth of Pennsylvania, and impartially, fully, and without reference to political preferences or results, perform, to the best of my knowledge and ability, the duties imposed on me by the said act; and that I will studiously endeavor to prevent fraud, deceit, and abuse, not only in the elections to be held under the same, but in the returns thereof." And if any commissioner appointed by or under this act shall knowingly violate his duty, or knowingly omit or fail to do his duty under this act, or violate any part of his oath or affirmation, he shall be liable to indictment for perjury in the proper county, and, upon conviction, shall be punished by a fine not exceeding one thousand dollars, or imprisonment in the penitentiary, at labor, not exceeding one year, or both, in the discretion of the court.

SEC. 25. It shall be the duty of such commissioners to deliver, as far as practicable, at least four of the copies of this act, and other extracts of laws published as hereinbefore directed, and at least two blank forms of poll-books, tally-lists, and returns intrusted to them, as mentioned in the twenty-third section of this act, to the commanding officers of every company or part of company of Pennsylvania soldiers in the actual military or naval service of the United States, or of this State, and to make suitable arrangements and provision for the opening of polls under this act; it shall also be the duty of said commissioners, as soon as practicable after the day of election, to call upon the judges of the election and procure one poll-book containing the returns of the election, and safely to preserve the same, not only from loss, but from alteration, and deliver the same, without delay, to the secretary of the Commonwealth.

SEC. 26. Said commissioners shall receive, in full compensation for their services under this act, ten cents per mile in going to and returning from their respective regiments, estimating the distance of travel by the usually travelled route; and it is hereby made the duty of the auditor general and State treasurer to audit and pay the accounts therefor in the same manner as other claims are now audited and paid by law. All commanding and other officers are requested to aid the commissioners herein appointed, and to give them all proper facilities to enable them to carry out the design and intention of this act.

SEC. 27. No mere informality in the manner of carrying out or executing any of the provisions of this act shall invalidate any election held under the same, or authorize the return thereof to be rejected or set aside; nor shall any failure on the part of the commissioners to reach or visit any regiment or company, or part of company, or the failure of any company or part of company to vote, invalidate any election which may be held under this act.

SEC. 28. The several officers authorized to conduct such election shall have the like powers, and they, as well as other persons who may attend, vote, or offer to vote at such election, shall be subject to the like penalties and restrictions as are declared or provided in the case of elections by the citizens at their usual places of election; and all of the provisions of the general election laws of this State, so far as applicable, and not inconsistent with the provisions of this act, nor supplied thereby, shall apply to all elections held under this act.

SEC. 29. No compensation shall be allowed to any judge or clerk under this act.

SEC. 30. When the sheriff of any city or county shall issue his proclamation for an election for a presidential, congressional, district, city, county, or State election under the laws of this State, he shall transmit, immediately copies thereof to the field officers and senior captains in the service aforesaid from said city or county.

SEC. 31. The sum of fifteen thousand dollars, or so much thereof as may be necessary, is hereby appropriated from the general revenue, to be paid upon the order of the secretary of the Commonwealth, to carry this law into effect.

SEC. 32. When any of the electors mentioned in the first section of this act, less than ten in number, shall be members of companies of another State or Territory, or for any sufficient and legal cause shall be separated from their proper company, or shall be in any hospital, navy yard, vessel, or on recruiting, provost, or other duty, whether within or without this State, under such circumstances as shall render it probable that he or they will be unable to rejoin their proper company, or to be present at his proper place of election, on or before the day of the elections therein mentioned, said elector or electors shall have a right to vote in the following manner:

SEC. 33. The voter aforesaid is hereby authorized, before the day of election, to



deposit his ballot or ballots, properly folded, as required by the general election laws of this State, or otherwise, as the voter may choose, in a sealed envelope, together with a written or printed, or partly written and partly printed statement, containing the name of the voter, the county, township, borough, or ward of which he is a resident, and a written or printed authority to some qualified voter in the election district of which said voter is a resident to cast the ballots contained in said envelope for him on the day of said election. Said statement and authority to be signed by the said voter, and attested by the commanding or some commissioned officer of the company of which he is a member in the case of a private, and of some commissioned officer of the regiment in the case of an officer, if any of such officers are conveniently accessible, and if otherwise, then by some other witness; and there shall also accompany said ballots an affidavit of said voter, taken before some one of the officers aforesaid, and in the absence of such officers, before some other person duly authorized to administer oaths by any law of this State, that he is a qualified voter in the election district in which he proposes to vote; that he is in the actual military service of the United States or of this State, describing the organization to which he belongs; that he has not sent his ballots to any other person or persons than the one in such authority mentioned; that he will not offer to vote at any poll which may be opened on said election day, at any place whatsoever, and that he is not a deserter, and has not been dishonorably dismissed from the service, and that he is now stationed at ———, in the State of ———. Said sealed envelope, containing the ballots, statement, authority, and affidavit as aforesaid, to be sent to the proper person, by mail or otherwise, having written or printed on the outside, across the sealed part thereof, the words, "Soldier's ballot for ——— township, (borough or ward,) in the county of ———."

SEC. 34. The elector to whom such ballot shall be sent shall, on the day of election, and while the polls of the proper district are open, deliver the envelope so received, unopened, to the proper election officer, who shall open the same in the presence of the election board, and deposit the ballots therein contained, together with the envelope and accompanying papers, as other ballots are deposited, and said board shall count and canvass the same in the same manner as other votes cast at said election; and the person delivering the same may, on the demand of any elector, be compelled to testify, on oath, that the envelope so delivered by him is in the same state as when received by him, and that the same has not been opened, or the contents thereof changed or altered in any way by him or any other person.

SEC. 35. The right of any person thus offering to vote at any such election may be challenged for the same causes that it could be challenged if he were personally present, and for no other reason or cause.

SEC. 36. Any officer of any general or special election in this State who shall refuse to receive any such envelope and deposit such ballots, or to count and canvass the same, and any elector who shall receive such envelope, and neglect or refuse to present the same to the officers of the election district indorsed on the said envelope, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the State prison not exceeding one year, and by fine not exceeding five hundred dollars, or either, or both, in the discretion of the court.

SEC. 37. Any person who shall willfully and corruptly make and subscribe any false affidavit, or make any false oath, touching any matter or thing provided in this act, shall be deemed guilty of willful and corrupt perjury, and upon conviction thereof shall be punished by imprisonment in the State penitentiary not exceeding five years, and by fine not exceeding one thousand dollars, or by either, or both, in the discretion of the court.

SEC. 38. That it shall be the duty of the secretary of the commonwealth to prepare the necessary blank forms to carry out the provisions of this act, and to furnish the same for use of the persons so engaged in the military service aforesaid.

SEC. 39. In case any qualified elector, in military service aforesaid, may be in any hospital, military or naval, or in any vessel or navy yard, the statements and affidavits in this act mentioned may be witnessed by and made before any officer of the vessel, navy yard, or other place in which said voter is for the time being engaged.

SEC. 40. It shall be the duty of every assessor within this Commonwealth, annually to assess and return, in the manner now required by law, a county tax of ten cents, upon each and every non-commissioned officer and private, and the usual taxes upon every commissioned officer, known by them to be in the military service of the United States, or of this State, in the army; and when any omission shall occur, the omitted names shall be added by such assessors to the assessments and list of voters, on the application of any citizen of the election district or precinct wherein such soldier might or would have a right to vote if not in such service, as aforesaid, and such non-commissioned officers and privates shall be exempt from all other personal taxes during their continuance in such service; and said assessors shall, in each and every case of such assessed soldiers or officers, without fee or reward therefor, give a certificate of such regular or additional assessment to any citizen of the election district or precinct who may at any time demand the same; and upon the presentation thereof to the tax



collector of said district or the treasurer of the said county, it shall be the duty of such officer to receive said assessed tax of and from any person offering to pay the same for the soldier or officer therein named, and to indorse upon such certificate a receipt therefor; and it shall also be the duty of said collector or county treasurer to receive said assessed tax from any person who may offer to pay the same for any of said officers or soldiers, without requiring a certificate of assessment, when the name of such persons shall have been duly entered upon the assessment books and tax duplicates, and give a receipt therefor to such persons, specially stating therein the name of the soldier or officer whose tax is thus paid, the year for which it was assessed, and the date of the payment thereof; which said certificate and receipt, or receipt only, shall be *prima facie* evidence to any election board provided for by this act, before which the same may be offered, of the due assessment of said tax against, and the payment thereof, by the soldier or officer therein named offering the same, as aforesaid, but said election board shall not be thereby precluded from requiring other proof of the right to vote, as specified by this act, or the general election laws of this Commonwealth; and if any of said assessors, collectors, or treasurers shall neglect or refuse to comply with the provisions of this section, or to perform any of the duties therein enjoined upon them, or either of them, he or they so offending shall be considered and adjudged guilty of a misdemeanor in office, and shall, on conviction, be fined in any sum not less than twenty nor more than two hundred dollars: *Provided*, That the additional assessments required to be made by the above section in the city of Philadelphia shall be made on application of any citizen of the election district or precinct thereof, upon oath or affirmation of such citizen, to be administered by the assessor, that such absent soldier is a citizen of the election district or precinct wherein such assessment is required by such citizens to be made.

SEC. 41. This act shall not apply to the election of members of council, or to ward and division officers, in the city of Philadelphia.

*Act of April 16, 1838. Pamph. Laws, p. 593.*

AN ACT regulating election districts.

SEC. 37. That no inspector, judge, or other officer of any election shall be eligible to any office at such election, nor shall any person holding an office under the general or State government be an inspector, judge, or other officer of any such election, nor shall any person holding an office under the government of the United States, be allowed to serve as member of city councils, commissioner of a district, or Burgess.

*Act of July 2, 1839. Pamph. Laws, p. 519.*

AN ACT relating to the elections of this Commonwealth.

SEC. 63. No person shall be permitted to vote at any election, as aforesaid, other than a white freeman of the age of twenty-one years, or more, who shall have resided in this State at least one year, and in the election district where he offers to vote at least ten days immediately preceding such election, and within two years paid a State or county tax, which shall have been assessed at least ten days before the election. But a citizen of the United States, who had previously been a qualified voter of this State, and removed therefrom and returned) and who shall have resided in the election district and paid taxes as aforesaid, shall be entitled to vote after residing in this State six months: *Provided*, That the white freemen, citizens of the United States, between the ages of twenty-one and twenty-two years, and having resided in this State one year, and in the election district ten days as aforesaid, shall be entitled to vote, although they shall not have paid taxes.

SEC. 64. Every person claiming a right to vote at any election as aforesaid shall, if required by either of the inspectors, make proof—

1. That he is a natural-born citizen of this Commonwealth; or,
2. That he was settled therein on the twenty-eighth of September, one thousand seven hundred and seventy-six, and has since continued to reside therein; or,
3. That having been a foreigner, who since that time came to settle therein, he took an oath or affirmation of allegiance to the same on or before the twenty-sixth of March, anno Domini one thousand seven hundred and ninety, agreeably to the then existing constitution and laws, and, as evidence of any of the said facts, the oath or affirmation of such person shall be sufficient; or,
4. That he is a natural-born citizen of some other of the United States, or had been lawfully admitted or recognized as a citizen thereof on or before the twenty-sixth day of March, one thousand seven hundred and ninety, and as evidence thereof he shall, if required by any judge or inspector of the election, produce a certificate in due form from some judge, prothonotary, or clerk of a court, mayor, alderman, or justice of the peace, or shall be examined on his oath or affirmation; or,
5. That having been an alien, he has been naturalized conformably to the laws of



the United States, and, as the only evidence thereof, he shall produce a certificate thereof, under the seal of the court where such naturalization took place, except where such person shall have resided in said ward, district, or township for ten years or upward next preceding such application to vote, in which case the oath of such applicant shall be *prima facie* evidence of naturalization.

SEC. 66. In all cases where the name of the person claiming to vote is not found on the list furnished by the commissioners and assessor, or his right to vote, whether found thereon or not, is objected to by any qualified citizen, it shall be the duty of the inspectors to examine such person on oath as to his qualifications, and if he claims to have resided within the State for one year or more his oath shall be sufficient proof thereof; but he shall make proof by at least one competent witness, who shall be a qualified elector, that he has resided within the district for more than ten days next immediately preceding said election, and shall also himself swear that his *bona fide* residence, in pursuance of his lawful calling, is within the district, and that he did not remove into said district for the purpose of voting therein.

SEC. 67. Every person qualified as aforesaid, and who shall make due proof, if required, of his residence and payment of taxes as aforesaid, shall be admitted to vote in the township, ward, or district in which he shall reside.

SEC. 102. If any inspector, judge, or clerk, as aforesaid, shall be convicted of any willful fraud in the discharge of his duties as aforesaid, he shall undergo an imprisonment for any term not less than three nor more than twelve months, and be fined in any sum not less than one hundred dollars nor more than five hundred dollars, and shall be for seven years thereafter disabled from holding any office of honor, trust, or profit in this Commonwealth, and shall moreover be disabled for the term aforesaid from giving his vote at any general or special election within this Commonwealth.

SEC. 103. If any inspector or judge of an election shall knowingly reject the vote of any qualified citizen, or knowingly receive the vote of any person not qualified, or conceal from his fellow-officers any fact on the knowledge of which such vote should by law be received or rejected, each of the persons so offending shall, on conviction, be punished in the manner prescribed in the one hundred and seventh section of this act.

SEC. 105. If any judge of an election, inspector, clerk, or other person, before the poll shall be closed, shall unfold, open, or pry into any ticket, with a design to discover the name of any candidate therein, every person so offending shall, on conviction, be fined in any sum not less than fifty nor more than one hundred dollars, and imprisoned for any time not less than one nor more than three months.

SEC. 106. If any person shall embezzle or unlawfully deface, alter, change, substitute, or destroy any ticket, list of voters, tally-paper, or certificate, taken or made at any election as aforesaid, he shall, on conviction, suffer imprisonment for a term not less than twelve months nor more than three years, at the discretion of the court, and be fined in any sum not less than one hundred nor more than one thousand dollars.

SEC. 110. If any person shall prevent or attempt to prevent any officers of an election under this act from holding such election, or use or threaten any violence to any such officer, or shall interrupt or improperly interfere with him in the execution of his duty, or shall block up or attempt to block up the window or avenue to any window where the same may be holden, or shall riotously disturb the peace at such election, or shall use or practice any intimidation, threats, force, or violence, with design to influence unduly or overawe any elector, or to prevent him from voting, or to restrain the freedom of choice, such person, on conviction, shall be fined in any sum not exceeding five hundred dollars, and be imprisoned for any time not less than one nor more than twelve months.

SEC. 115. If any person or persons shall make any bet or wager upon the result of any such election within this Commonwealth, or shall offer to make any such bet or wager, either by verbal proclamation thereof or by any written or printed advertisement, challenge or invite any person or persons to make such bet or wager, upon conviction thereof he or they shall forfeit and pay three times the amount so bet or offered to be bet.

SEC. 116. It shall be the duty of every judge, sheriff, mayor, alderman, justice of the peace, or constable knowing of any person having offended against the provisions of the one hundred and fifteenth section of this act, to commence proceedings against the persons so offending; and it shall be the duty of the grand juries of the respective counties within this Commonwealth to make a presentment of all such offenses coming within their knowledge.

SEC. 117. It shall be the duty of the inspectors and judge of the election to reject the votes of all persons who they or any of them shall know, or who shall be proved before them to have made, or who are in any manner interested in, any bet or wager on the result of said election, and on the request of any qualified elector said inspectors and judge shall receive proof to show the person so offering to vote has or has not made any such bet or wager, or is or is not interested therein.

SEC. 118. It shall be the duty of the several constituted authorities having care and charge of the poor in the respective counties, districts, and townships of this Com-



monwealth, knowing, or being informed under oath, of any person or persons having made any bet or wager of any land, goods, money, or thing of value, on the result of any election within this Commonwealth or deposited the same in the hands of any person within their respective counties, districts, or townships, to bring suit in the name of the Commonwealth of Pennsylvania, for the use of the poor of such county, district, or township, against such depositor or stakeholder, where said bet is deposited in the hands of a third person, or against the party winning said bet, when the same is not so deposited, for the recovery of the amount so bet; and if on the trial it shall be made appear the said lands, goods, money, or thing of value, were bet on the result of any election within this Commonwealth, said guardians, directors, or overseers of the poor shall be entitled to recover the amount or value thereof, for the use of the poor from said stakeholder, or person winning said bet where there is no stakeholder: *Provided*, Said suit is brought within two years from the time of making said bet. And the stakeholder is hereby prohibited, during said time, to pay over the amount so bet to either of the parties, and shall be liable for the same, whether such bet is paid over or delivered to the parties or either of them or not, and the party winning shall in like manner be liable to the payment of the whole amount so bet, where the same is received by him. And said bet, or the value thereof, may be recovered as debts of like amount are by law recoverable; and if said guardians, directors, or overseers of the poor shall neglect or refuse to bring such suit, they shall be guilty of a misdemeanor in office, and, on conviction, shall be fined in any sum not less than the amount so bet nor more than double the amount.

SEC. 119. If any person, not by law qualified, shall fraudulently vote at any election within this Commonwealth, or being otherwise qualified shall vote out of his proper district, or if any person knowing the want of such qualification, shall aid or procure such person to vote, the person or persons so offending shall, on conviction, be fined in any sum not exceeding two hundred dollars, and be imprisoned for any term not exceeding three months.

SEC. 120. If any person shall vote at more than one election district, or otherwise fraudulently vote more than once on the same day, or shall fraudulently fold and deliver to the inspector two tickets together, with the intent to illegally vote, or shall vote the same, or if any person shall advise and procure another so to do, he or they so offending shall, on conviction, be fined in any sum not less than fifty nor more than five hundred dollars, and be imprisoned for any term not less than three nor more than twelve months.

SEC. 121. If any person not qualified to vote in this Commonwealth agreeably to law, (except the sons of qualified citizens,) shall appear at any place of election for the purpose of issuing tickets, or by influencing the citizens qualified to vote, he shall, on conviction, forfeit and pay any sum not exceeding one hundred dollars for every such offense, and be imprisoned for any term not exceeding three months.

SEC. 122. If any elector shall receive any gift or reward for his vote, in meat, drink, money, or otherwise, he shall forfeit his right to vote at that election, and shall, on conviction, be fined in any sum not exceeding one hundred dollars, and suffer imprisonment for a term not less than one nor more than six months.

SEC. 123. If any person shall give or bestow any such gift or reward in order to procure any person to be elected, or shall promise or attempt, either directly or indirectly, to confer any such gift or reward for such purpose, or shall attempt or endeavor to influence any voter by any offer or promise of any appointment, employment, or pecuniary benefit, or by threats of loss of any appointment, employment, or pecuniary benefit, he shall, on conviction, be fined in a sum not less than one hundred dollars nor exceeding one thousand dollars, and suffer imprisonment not less than one nor more than twelve months.

SEC. 124. If any person shall willfully and corruptly make or procure any person to make falsely any oath or affirmation required or authorized by this act, such person shall suffer such penalties and disabilities as are incurred on conviction of willful and corrupt perjury, or subornation of perjury.

SEC. 125. If any person shall knowingly publish, utter, or make use of any forged or false receipt or certificate, with intent to impose the same upon or deceive any inspector or judge at any election, as aforesaid, such person shall, on conviction, be fined in any sum not less than fifty nor more than five hundred dollars, and suffer imprisonment not less than six months nor more than two years.

*Act of June 13, 1840. Pamph. Laws, p. 683.*

SEC. 14. Every inspector and judge of an election shall have full power and authority to administer oaths or affirmations to any and all persons requiring or offering to be sworn or affirmed, in relation to the right of any person to vote at any election authorized to be held under any law of this Commonwealth, and generally shall, in the exercise of the duties of their office as inspectors or judges, have the same power to administer oaths or affirmations required or authorized to be administered by the pro-



visions of this act, or the act to which this is a supplement, as justices of the peace have by the laws of this Commonwealth, and a violation of such oath or affirmation shall be subject to the same fines and penalties which are or may be inflicted by law for a violation of such oath or affirmation when administered by a justice of the peace.

*Act of April 11, 1848. Pamph. Laws, p. 512.*

SECTION 1. That the election for electors of President and Vice-President of the United States shall, in the year one thousand eight hundred and forty-eight, and every fourth year thereafter, be held on the Tuesday next after the first Monday of November.

### THOMAS vs. ARNELL.

A final report was never made in this case.

January 21, 1867.—Mr. Dawes, from the Committee of Elections, made the following report.

*The Committee of Elections, to whom were referred the memorial and accompanying papers of Dorsey B. Thomas, contesting the right of the Hon. Samuel M. Arnell to a seat in this House as a representative in the thirty-ninth Congress from the sixth congressional district of Tennessee, report:*

That the election here contested was held on the first Thursday in August, 1865, and the certificate of election was given by the governor of the State to Mr. Arnell, under which, at the commencement of the present session, Mr. Arnell appeared, was qualified, and still holds the seat. All the papers in the case will be found in Miscellaneous Document No. 6.

The statute of February 19, 1851, provides that the contestant shall serve notice of contest upon the sitting member within thirty days after the result of said election shall have been determined by the officer or board of commissioners authorized by law to determine the same, and the sitting member shall answer the same within thirty days, and all testimony shall be taken within sixty days thereafter. In the present case the statute has not been complied with; neither notice of contest or answer have been served. At the hearing before the committee the contestant claimed the right to be heard upon the allegations in his petition without further pleadings, for the reasons set forth in the same, and the sitting member contended that the case should be dismissed for want of a compliance with the requirements of said statute.

The following letter from the sitting member was submitted by the contestant as evidence that he had waived a notice of contest, and there was no other evidence upon this point:

THIRTY-NINTH CONGRESS OF THE UNITED STATES,  
*Washington, D. C., December 4, 1866.*

MY DEAR SIR: Yours of the 3d instant has been received. The following statement contains the substantial facts, so far as I remember them: In the house of representatives at Nashville, Tennessee, after learning that Governor Brownlow had given to me the certificate of election for the sixth congressional district of Tennessee to the thirty-ninth Congress, you remarked to me that you intended to contest the election. I replied, "Very well; I expect you to do so." After some other conversation of a mutually friendly character, on your turning away, I volunteered the information that it was necessary to give me notice, which you seemed not to have thought of. I further remarked that I desired to throw no obstacles in the way, and would acknowledge notice. You then called up several witnesses, and the matter was verbally understood.

Hoping that this will be satisfactory, I am, very respectfully, yours,

SAMUEL M. ARNELL.

Hon. D. B. THOMAS.

Without critically examining this note for the purpose of ascertaining whether it sustained the position of the contestant, that it waived all



notice whatever, or, as contended by the sitting member, was merely evidence of an agreement on his part to acknowledge the service of legal notice whenever the same should be made, the committee were of opinion that it was not competent for the parties to entirely waive the requirements of the statute of 1851; that said statute was enacted not only to aid the parties in the preparation of their case, but also to secure a record and a distinct and well-defined issue, upon which the committee and the House were to pass. To this end the statute requires the notice to be in writing, and to specify in such writing particularly the grounds upon which he relies in the contest, and the answer to admit or deny the facts alleged in the notice, and to state specifically any other grounds upon which he rests the validity of his election. To the issue thus distinctly defined, the statute and the uniform decisions of the House confine all testimony to be taken. It must be evident to every one that it is impossible for the committee or the House to hear and determine a case without an issue joined. Besides, no testimony could be taken by either party without such issue, previously framed. The statute requires testimony to be taken in a manner therein prescribed, before a time therein fixed, and in support of an issue previously made up. It is perfectly absurd to suppose it possible for either party to take testimony in support of his own allegations, or in contravention of those of the other party, before either have been made, or for the committee to hear the parties upon an issue reserved.

The committee were, therefore, of opinion that this case could not be heard by them in its present position, and that it must be dismissed unless the House should authorize the parties to make up an issue and submit the same, with such evidence as each may be able to produce in relation to the same, to the committee or the House. It was thereupon claimed by the contestant that he has been led into this non-compliance with the statute by the agreement of the sitting member to acknowledge notice heretofore alluded to, and also by the peculiar condition of the State of Tennessee in reference to representation in this House. All representation from that State had been refused admission into Congress till near the close of the first session, and it was not known till then, long after the time prescribed by the statute for serving notice had elapsed, that a contest would be of any avail.

The committee heard both parties upon the question of recommending to the House that the authority prayed for be given. This authority was given in the case of *Williamson vs. Sickles* (Bart. 288) for the special reasons existing in that case, and in the opinion of the committee there are peculiar reasons existing in the present case, not likely again to occur, which will justify the House in authorizing the making up of a record as nearly in conformity with the requirements of the statute as the circumstances of the case will permit. They therefore recommend the adoption of the following resolution:

*Resolved*, That Dorsey B. Thomas, contesting the right of the Hon. Samuel M. Arnell to a seat in this House as a representative from the sixth congressional district of Tennessee be, and he is hereby, required to serve upon the said Arnell, within eight days after the passage of this resolution, a particular statement of the grounds of said contest, and that said Arnell be, and he is hereby, required to serve upon said Thomas his answer thereto in eight days thereafter, and that both parties be allowed eighteen days, next after the service of said answer, to take testimony in support of their several allegations and denials in all other respects in conformity to the requirements of the act of February 19, 1851, except that not more than four days' notice shall be required for the taking of any deposition under this resolution.



## FORTIETH CONGRESS, FIRST SESSION.

## COMMITTEE OF ELECTIONS.

Messrs. DAWES, of Massachusetts.  
SCOFIELD, of Pennsylvania.  
UPSON, of Michigan.  
SHELLABARGER, of Ohio.  
MCCLURG, of Missouri.

Messrs. COOK, of Illinois.  
POLAND, of Vermont.  
NICHOLSON, of Delaware.  
KERR, of Indiana.

Mr. Nicholson subsequently resigned, and Mr. Chanler, of New York, took his place.

## COLORADO CONTESTED ELECTION.

The report in this *prima facie* case was not sustained by the House.

On motion of Mr. Wilson, of Iowa, Chilcott was sworn in as the sitting delegate pending the investigation of the case upon its merits by the Committee of Elections; yeas 91, nays 36.

Hunt, who held the governor's certificate, was made contestant, but soon after abandoned the contest.

March 14, 1867.—Mr. Scofield, from the Committee of Elections, submitted the following report:

*The Committee of Elections, to which were referred the papers relating to the election of a delegate from the Territory of Colorado, to determine "as to the prima facie right to a seat," report as follows:*

Among the papers referred is a certificate, dated September 5, 1866, signed by Alexander Cummings, governor of the Territory, and attested by Frank Hall, the secretary. The certificate, after reciting that an election was held on the 7th of August, 1866, concludes that A. C. Hunt was "duly elected." The election laws of the Territory provide that "the secretary of the Territory, auditor, treasurer, or any two of them, in the presence of the governor, shall proceed \* \* \* to canvass the votes given for all territorial officers, and the governor shall give a certificate of election to the person having the highest number of votes for each office." The certificate of the governor in favor of Mr. Hunt makes no allusion to this canvass, nor does it give any data upon which the conclusion is based. This omission, although noticeable, would not of itself have been considered by a majority of the committee fatal to the validity of the certificate. But Mr. Hunt did not rest his case upon that paper alone. He introduced Governor Cummings in its support. The governor informed the committee that on the said 5th day of September a canvass of the votes cast for delegate was had in his presence by the board of canvassers; that two of said board found that a majority of all the votes had been cast for George M. Chilcott, and that one of said board dissented from this conclusion, and that he, the governor, considering himself one of the board, agreed with the dissenting member, making a tie, whereupon he determined the election himself, and made a certificate in opposition to the conclusion of two members of the board. In addition to the governor's statement, among the papers submitted by the House is a report of the board of canvassers, signed by Frank Hall, secretary of the Territory, and Richard E. Whitsitt, auditor of the Territory, and addressed to the governor, in which they state that at the canvass held in his presence, according to law, they find that Mr. Chilcott had 3,529 votes, and A. C. Hunt had 3,421 votes, by which it would



appear that Mr. Chilcott was elected delegate by 108 majority. The certificate of the governor thus appears to have been issued in violation of the laws of the Territory, in order to reverse the facts of the canvass. Under this state of facts the committee do not feel authorized to report that Mr. Hunt is entitled *prima facie* to a seat as delegate.

The certificate of election presented by Mr. Chilcott is based upon the report of the board of canvassers, and is signed by Frank Hall, acting governor of the Territory; but it bears date February 5, 1867, five months subsequent to the action of Governor Cummings in the same case. The committee are of the opinion, as held in the case of Todd and Jayne, that this power having been once exercised by the proper officer cannot be again exercised by his successor, and that therefore Mr. Chilcott was not entitled *prima facie* to a seat as delegate.

The committee recommend the adoption of the following resolution:

*Resolved*, That the papers and evidence relating to the right of A. C. Hunt and George M. Chilcott to a seat in the fortieth Congress as a delegate from the Territory of Colorado be referred to the Committee of Elections, with instructions to report which, if either, of said claimants is entitled thereto; and that the committee have power to require the service of such notices and grant such time for taking further evidence as they may deem proper.

---

EXECUTIVE DEPARTMENT, COLORADO TERRITORY,  
*Denver, September 5, 1866.*

SIR: This is to certify that at an election held August 7, 1866, in accordance with the laws of Congress and of the Territory of Colorado, for delegate to represent said Territory in the fortieth Congress of the United States, you were duly elected such delegate.

In testimony whereof I have hereunto set my hand and caused the seal of the Territory of Colorado to be affixed. Done at Denver, this 5th day of September, A. D. 1866.

[SEAL.]

ALEXANDER CUMMINGS,  
*Governor of Colorado Territory.*

Attest:

FRANK HALL,  
*Secretary of Colorado Territory.*

Hon. A. C. HUNT,  
*Denver, Colorado Territory.*

---

EXECUTIVE DEPARTMENT, *Colorado Territory.*

*To whom it may concern, greeting:*

Be it known that I, Frank Hall, secretary and acting governor of the Territory of Colorado, do hereby certify that at a canvass of the votes cast in the Territory of Colorado for delegate to Congress, made by the territorial board of canvassers in the city of Denver, Territory aforesaid, on the fifth (5th) day of September, A. D. 1866, it was found and declared by said board of canvassers that George M. Chilcott received three thousand five hundred and twenty-nine votes for delegate to Congress, and A. Cameron Hunt received three thousand four hundred and twenty-one votes for delegate to Congress.

George M. Chilcott, having received the highest number of votes, was declared duly elected delegate to the fortieth Congress.

In testimony whereof I have hereunto set my hand and caused the great seal of the Territory to be affixed. Done at Golden City, this 5th day of February, A. D. 1867.

[SEAL.]

FRANK HALL,  
*Acting Governor of Colorado Territory.*

---

*To his excellency Hon. Alexander Cummings, governor of the Territory of Colorado:*

The undersigned, composing the board of canvassers of the said Territory, respectfully represent that in the discharge of the duties imposed on them by the laws of said



Territory, they did, in your presence, on the fifth (5th) day of September, A. D. 1866, proceed to canvass the votes polled at an election held in said Territory on the 7th day of August, 1866, for delegate from the said Territory to the fortieth (40th) Congress of the United States; and we do hereby certify that we have carefully inspected and examined all the returns from the board of canvassers of each of the counties in said Territory as returned and now on file in the office of the secretary, and that the following is the result of our canvass of the whole number of votes polled for said office at said election, to wit: For delegate to Congress, George M. Chilcott has 3,529 votes; A. C. Hunt has 3,421 votes; J. B. Wolf has 9 votes; H. C. Hunt has 1 vote; H. Butler has 32 votes; A. A. Bradford has 1 vote; P. Casper has 1 vote; scattering, 2 votes.

Wherefore the undersigned further certify that George M. Chilcott did receive at said election the greatest number of votes polled for the office of delegate from the Territory of Colorado to the fortieth Congress of the United States.

In witness whereof we have hereunto set our hands on this 6th day of September, A. D. 1866.

FRANK HALL,  
*Secretary of the Territory of Colorado.*  
RICHARD E. WHITSITT,  
*Auditor of the Territory of Colorado.*

I, Frank Hall, secretary of Colorado Territory, do hereby certify that the foregoing is a true and correct copy of a certificate given by the board of territorial canvassers to his excellency Hon. Alexander Cummings, governor of the Territory of Colorado.

In testimony whereof I have hereunto set my hand and affixed the great seal of the Territory, on this the 7th day of September, A. D. 1866.

[SEAL.]

FRANK HALL,  
*Secretary of Colorado Territory.*

#### MINORITY REPORT.

Mr. Kerr, from the minority of the Committee of Elections, submitted the following views:

The undersigned, members of the Committee of Elections, being unable to concur in the conclusion of the majority touching the *prima facie* right of either of the claimants to a seat in this House as a delegate from the Territory of Colorado, respectfully submit the following views:

The subject referred to the committee for investigation at this time does not involve an examination of the case upon its merits, as disclosed by the facts and evidence, which are not yet before the committee, and cannot with propriety be considered by the House, but merely involves an inquiry as to the *prima facie* title of either of the claimants to be admitted to occupy a seat pending the further prosecution of the contest.

The law of Congress and the law of the Territory alike require the governor of the Territory to give to the candidate for delegate having the highest number of votes a certificate of election. The particular form of that certificate is not prescribed by either law. The election was held on the 7th of August, 1866, and on the 5th of September, 1866, the board of canvassers assembled, and on the same day the governor issued to one of the claimants of the seat, A. C. Hunt, esq., a certificate of election as delegate to the fortieth Congress. The material language of that certificate is, "that at an election held August 7, 1866, in accordance with the laws of Congress and of the Territory of Colorado, for delegate to represent said Territory in the fortieth Congress of the United States, you (A. C. Hunt) were *duly* elected such delegate." It was executed by Alexander Cummings, governors, with the seal of the Territory affixed, attested by Frank Hall, secretary of the Territory.

On the same day (September 5, 1866) the governor issued and caused to be published a general proclamation, declaring the election of Mr. Hunt as delegate, which was executed and attested in the same manner as the certificate.



On the 5th of February, 1867, Frank Hall, then secretary and acting governor of the Territory, executed under the seal of the Territory and delivered to the other claimant, George M. Chilcott, esq., another paper in which he certifies that by a canvass of the votes cast at the election of August 7, 1866, it was found that 3,529 were cast for Chilcott, and 3,421 for Hunt, as delegate, and then states that "George M. Chilcott, having received the highest number of votes, was declared duly elected delegate to the fortieth Congress."

These are the facts upon which the claimants respectively insist that the right to a seat should in the first instance be determined. We submit, therefore, that the *prima facie* title is in A. C. Hunt. The certificate held by him is executed in the usual form by the only officer having authority to issue the same, and is attested by the proper officer. It alleges in comprehensive but apt and proper words the existence of every material fact necessary to sustain such a certificate. Its language does not admit of any other construction without a tortuous disregard of the most common and accepted meaning of words and of established rules of interpretation.

To have been "*duly* elected," "in accordance with the laws of Congress and of the Territory of Colorado," certainly excludes the conclusion that the recipient of such a certificate could have received *less* than "the highest number of votes." It is alike demanded by reason and authority that the words used shall be taken in their most common and recognized acceptation, and that every fair and reasonable inference shall be made in favor of the *prima facie* sufficiency of the paper, and even if the terms used were ambiguous, that such a meaning should be affixed to them as would be most suitable to the subject-matter and purpose of the certificate. Applying these rules to the case in hand, the right to the seat would seem to be very clearly in Mr. Hunt, until the contest shall have been examined on its merits.

The certificate awarded to Mr. Hunt by the governor in this case is almost identical in form with those generally given by governors of States to representatives-elect to Congress which have always been holden to be sufficient, *prima facie*.

It cannot with legal force or propriety be insisted that such a certificate, when executed by the governor of a Territory, should contain any more extensive recitals of facts than when executed by the governor of a State. In either case its substantial and reasonable purpose is attained if it states that the holder of it is duly elected according to law. Such a certificate constitutes sufficient evidence of a valid election *prima facie*, at first impression, and without submitting evidence of complete title as against all men.

But it is claimed that this apparent title in Hunt is overcome by the certificate or paper already referred to, which was executed and delivered to Mr. Chilcott five months afterward by Frank Hall, "secretary, and acting governor of the Territory." How Mr. Hall, at the date of his paper, came to be acting governor does not appear. Why he, five months before, as secretary, attested the certificate and proclamation in favor of Mr. Hunt is entirely unexplained. The value of the paper must be determined by mere inspection, and by comparison of it with those presented by Mr. Hunt. Thus tested, it is certainly defective as evidence of title in any one. It is issued five months after the first, and is attested by no one. It is issued by the same officer who attested the first, but the inconsistency of his connection with the two acts is not explained. It is executed solely by a person or officer of whose right to assume the character of "acting governor of the Territory" this House cannot take judicial notice. At the time it was executed, the authority



to issue a certificate of election had been formally exercised by the rightful governor of the Territory. That authority could not be again exercised in reference to the result of the same election by another officer who might, by mere accident, become temporarily entitled to act as governor. If any facts existed or came the knowledge of the "acting governor" after the execution of the regular certificate by the governor, they may constitute valid ground of contest, and may defeat the *prima facie* right of Mr. Hunt to the seat, but such facts cannot be examined on a mere inquiry as to *prima facie* title.

It is stated in the report of the majority that "Mr. Hunt did not rest his case upon his certificate alone," but that "he introduced Governor Cummings in its support. The governor informed the committee that on the said 5th day of September, a canvass of the votes cast for delegate was had in his presence by the board of canvassers; that two of said board found that a majority of all the votes had been cast for George M. Chilcott, and that one of said board dissented from this conclusion, and that he, the governor, considered himself one of the board, agreed with the dissenting member, making a tie, whereupon he determined the election himself, and made a certificate in opposition to the conclusion of two members of the board."

Now, the undersigned have read the above statement with great surprise, because, in the facts that transpired before the committee, they know no foundation for it whatever. On the contrary, Governor Cummings expressly declined to make any statements in the nature of evidence, and only appeared before the committee in the proper capacity of attorney for Mr. Hunt, and addressed his argument to the case made by the credentials and record evidence alone. He refused, when requested, to detail the facts in connection with dispute about the right to the seat. Indeed, the committee could not, with propriety, under the resolution of reference, receive or consider any parol evidence whatever, and did not attempt to do so.

We therefore ask the House to adopt the following resolution as a substitute for that of the majority :

*Resolved*, That A. C. Hunt, esq., is *prima facie* entitled to the seat in this House as delegate from the Territory of Colorado, pending the contest of his right to the same by George M. Chilcott, esq.

M. C. KERR.

JOHN A. NICHOLSON.

LUKE P. POLAND.

---

### DELANO vs. MORGAN.

Allegations of fraud, and particularly that deserters from the army and navy voted for the sitting member. Held that desertion may disqualify from voting (under special enactment) without conviction of the offense in a court.

Where the returns have been tampered with they must be thrown out.

Where judges of election did not possess the qualifications prescribed by law it was held that the returns in those precincts must be thrown out.

Report adopted, (June 3,) yeas, 80; nays, 37.

May 25, 1868.—Mr. Scofield, from the Committee of Elections, made the following report:

*The Committee of Elections, to whom was referred the case of Columbus Delano, contesting the seat of George W. Morgan, make the following report:*

This contest comes from the thirteenth district of Ohio, composed of



the counties of Coshocton, Knox, Licking, and Muskingum. The election was held on the 9th of October, 1866, and the vote as returned was as follows:

	Morgan.	Delano.
Coshocton .....	2, 468	2, 100
Knox .....	2, 537	2, 913
Licking .....	4, 020	3, 397
Muskingum .....	4, 203	4, 547
	<hr/>	<hr/>
	13, 228	12, 957
	12, 957	
	<hr/>	
Majority for Morgan .....	271	
	<hr/>	

As both parties claim that a large number of persons, not qualified electors, voted at this election, it is necessary to determine what evidence shall be taken to show for which candidate such votes were cast. For whom a vote is given, by the laws of Ohio, is a secret properly known only to the voter himself, and he is never required to disclose it. This fact must therefore be often determined upon circumstantial evidence alone. To what political party a voter belonged, whose partisan he had been, whose friends claimed for him the right to vote at the time, what he said of his intention before and his act after voting, are circumstances which each claimant has endeavored to prove, and which the committee have considered in making up their verdict. In this action they are governed by precedent as well as principle. The same ruling obtained in the celebrated case from New Jersey, decided in 1840, and known as the "broad seal" case; and also in *Vallandigham vs. Campbell*, decided in 1858. (See *Bartlett's Contested Elections*, pages 28 and 233.) If it is not to be inferred, from this kind of evidence, for whom an illegal vote was cast, it cannot, except in a few instances, be ascertained at all. Any number of illegal votes, once placed in the ballot-box, either by the deception or connivance of the board, can never after be excluded unless the whole poll is rejected or the fraudulent voters voluntarily confess their crime. When, therefore, an illegal vote is shown to have been cast, the committee have endeavored to ascertain from circumstantial evidence, when positive proof could not be given, for whom it was cast and deduct it from his count.

The contestant claims that two hundred and one deserters from the army and navy of the United States voted for the sitting member, and that this number of votes should be deducted from his count. Citizenship of the United States is one of the qualifications for an elector by the constitution of Ohio. By the act of Congress passed March 3, 1865, it is provided that "all persons who have deserted the military or naval service of the United States, who shall not return to said service, or report to a provost marshal, within sixty days after the proclamation hereinafter mentioned, shall be deemed and taken to have voluntarily relinquished and forfeited their rights of citizenship and their rights to become citizens." Under this law and the constitution of Ohio a deserter is not a legal voter in that State. In the argument before the committee by the counsel for the sitting member this inference of the law was not disputed, nor the constitutionality of the law denied, but it was claimed that neither the election boards nor this House could pass upon the charge of desertion. This fact, it was claimed, must be first settled by trial and conviction in a court; in other words, that the



disqualification did not consist in *desertion*, but in *conviction* of desertion. But the law does not so provide. Conviction is not required nor mentioned. It is the duty of an election board to pass upon the facts that constitute a disqualification, such as non-age, non-residence, idiocy, insanity, color, race, bribery, &c. Why should they not pass upon the fact of desertion? Because, it is said, that is a crime. So is bribery, and yet the sitting member asks that a considerable number of votes, alleged to have been cast under corrupt influences, should be thrown out, although there was no conviction or even trial, and the committee have complied with his demand. It makes no difference that the same facts which constitute a disqualification would, if heard before a court, constitute a crime. There are many instances where the law makes *conviction* in a court the ground of exclusion from the franchise, and then, of course, exclusion can only follow conviction. But when it makes the existence of a fact, as in this case, the ground of exclusion, that fact must be passed upon by the officers of the election in the first instance, and by this House upon a contest. In the further argument of the case by the sitting member himself, it was claimed that the law was unconstitutional and void. The committee do not feel called upon to discuss this question. The law was enacted by the concurrence of both houses and the approval of the President. At that time the country was preparing for the last great struggle with the rebellion, and every available man was needed in the field. This act was put forth to call back deserters. Those who returned were to be pardoned, and those who abjured the duties were to forfeit the privileges of citizenship. The emergency is passed now, and the law, perhaps, should be repealed, but the power that enacted it can alone repeal it. The Supreme Court alone can declare it void. It is in the power of the House, to be sure, to override this law, because there is no appeal, but the committee do not recommend it. The committee were of opinion, therefore, that deserters from the military and naval service of the United States were not entitled to vote under the constitution of Ohio, and therefore deduct from the count of the sitting member the following numbers of voters who are proved to be deserters and to have voted for him:

In Coshocton County 53; being all those named on contestant's brief except Nos. 4, 8, 9, 14, 15, 23, 26, 29, 30, 31, 22, 47, 49, 55, 57, and 68.

In Knox County 41, being all named in contestant's brief except Nos. 16, 20, 25, 26, 35, 36, 37, 43, 46, 47, 48, and 51.

In Licking County 19, being all on contestant's brief except Nos. 2, 6, 8, 10, 12, 16, 23, 25, 26, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, and 41.

In Muskingum County 24, being all named on contestant's brief except Nos. 13, 14, 15, 16, 18, 19, 20, 23, 24, 25, 27, 32, 33, 35, and 38.

Following the rule of evidence above stated, the committee find that 40 persons disqualified as electors because of non-residence, two because of alienage, and eight because of minority, voted for the sitting member and should be deducted from his number of votes. The non-resident voters are numbered on contestant's brief as follows: In Coshocton County Nos. 1, 2, 4, 6, 8, 10, and 11. In Knox County Nos. 1, 2, 3, 4, 6, 8, 11, and 12. In Licking county Nos. 1, 2, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, and 20. In Muskingum County Nos. 1, 2, 3, 4, 8, 9, 10, 13, 14, and 16. The aliens were John Dermody and Michael Scully, and they voted at Mount Vernon, Knox County. The minors are numbered on contestant's brief as Nos. 1, 2, 3, 4, 5, 6, 7, and 8. The votes of eight persons who are proved to have been qualified electors and who offered to vote for contestant were rejected. Their names will be found on the eleventh page of contestant's brief, and numbered 1, 3, 5, 6, 7, 8, 9, and



10. The vote of W. H. Foote, No. 4 of this list, was exchanged by the judge of election for the vote handed in by David McDaniels. Foote handed in a vote for contestant and McDaniels for the sitting member; Foote was held to be a voter and McDaniels not, but by mistake McDaniels's vote was put in the box, and Foote's thrown away. This requires a change of two, and makes from this list ten votes to be counted for contestant.

In Jefferson township, Coshocton County, three votes cast for contestant were fraudulently exchanged and counted for the sitting member, making a change of six votes, which the committee correct.

The contestant asks that the returns from Pike township, Knox County, should be rejected because Salathiel Parrish, one of the judges of the election, being a deserter from the draft of 1864, was incompetent to act in that capacity. The constitution of Ohio provides, "that no person shall be elected or appointed to any office in this State, unless he possesses the qualifications of an elector;" and the statutes of that State further provide that "three persons to be elected township trustees, to have the qualifications of electors, shall act as judges of the elections." Under the act of Congress approved March 3, 1865, and the constitution and laws of Ohio, a deserter has not the qualifications of an elector, and is therefore incompetent to act as a judge of election. In the case of *Howard vs. Cooper*, (Contested Elections, vol. 2, p. 282,) the returns of Van Buren township were rejected because there were only two judges, when the law required three. If a return is untrustworthy when one of the judges is absent, it is certainly more so if the vacancy is filled by a person disqualified to act. Two competent judges are certainly more reliable when acting by themselves than when advised, directed, and in part overruled by a third, pronounced by the law unfit for the trust. This principle is decided in *Jackson vs. Wayne*, (Contested Elections, vol. 1, p. 47.) Whether the selection of this judge was intentional or unintentional can make no difference in the enforcement of the rule, but the committee are not authorized to conclude, from any of the surroundings of this case, that it was purely accidental. This law of the United States was very much criticised by those who were opposed either to the war or the mode of conducting it. Many persons insisted that it was unconstitutional and void, and might be safely disregarded by the judges of elections. Indeed, it was disregarded in many parts of this district. In this very precinct, as appears from the evidence, eleven deserters were allowed by the board, thus illegally constituted, to cast their votes. Whatever may be thought of the propriety or constitutionality of this law by individuals, it was certainly binding upon the electors of Pike township until repealed by Congress or pronounced unconstitutional by the Supreme Court.

It is worthy of note in this connection that the required form of certificate to the poll-book was essentially changed in this case. The special fact required by law to be given is altogether omitted. It certifies only to the *number of votes cast*, while the law requires that it should certify that they were cast by *electors*. The number is not so important, because that is also in the certificate to the tally papers, but that it should appear affirmatively that the persons casting these votes were qualified voters, is pointedly required by the statute of Ohio. There is great propriety in the law, and it ought in all proper cases to be enforced. The committee, mainly for the reason first stated, have rejected these returns.

The contestant also claims that Linton and Monroe townships, in Coshocton County, should be rejected. In each of these townships the



ballot-box was tampered with, and the number of votes returned for the sitting member was larger than the number of votes cast for him, while the contestant's vote was proportionally diminished. In Linton the judges refused to allow certain friends of the contestant to be present while the votes were being received, as required by law; and in Monroe the township clerk refused to allow the friends of contestant to examine the retained poll-book and ballots as the law requires, and the poll-book returned to the clerk of the court was afterward stolen. It is further objected to the returns from these townships that there is no certified poll-book. Either the frauds proved to have been practiced upon the ballot-box, or the absence of all certificate to the poll-book, might be considered a good reason for rejecting these returns altogether; but in proving the frauds the parties have also proved the number of votes and for whom they were cast. According to this evidence 46 should be deducted from the majority returned for the sitting member from Linton township, and 20 from Monroe. If the returns are rejected altogether, the majority to be deducted from the count of the sitting member in both townships would be 133. The committee have accepted the corrected tally.

The sitting member offers evidence tending to show that twelve idiotic or insane persons and ten minors voted for the contestant. Upon a careful examination of the testimony the committee come to the conclusion that seven of the first class and eight of the latter should be rejected. The two not rejected as minors are Nos. 4 and 10 on the brief of the sitting member. The committee also find that 22 votes were cast for the contestant by persons who were disqualified by reason of non-residence. These are numbered on the brief of the sitting member as 4, 19, 20, 21, 22, 28, 29, 33, 34, 38, 39, 41, 42, 44, 46, 50, 62, 65, 69, 71, 72, and 83.

The sitting member claims that a large number of non-residents voted in Blue Rock township, and that the whole return should therefore be rejected. It appears from the evidence that there was considerable excitement in this locality over the discovery of rock oil. During the entire year preceding the election, adventurers and laborers to the number of four hundred or five hundred were attracted here from other counties of the State, and some from other States. The votes cast in this township in 1866 were 87 more than in 1865, and one witness estimates that at least 50 of this increase were cast by the new-comers. By the laws of Ohio a voter must have resided in the State one year, in the county thirty days, and in the township twenty days. There is no evidence that any person voted here who had not this requisite of residence. It would be very strange if of the four hundred or five hundred men who emigrated to this township one-fourth or one-fifth had not come with the intention of remaining. They came to engage in the business of producing oil, and a part of them left only after they found that business a failure. The committee think the whole township should not be disfranchised on mere suspicion that some non-residents voted.

The sitting member also claims that the returns from Clinton township, Knox County; Licking, Muskingum, Blue Rock, Madison, Union, Monroe, and Harrison townships, Muskingum County; Harrison and St. Albans townships, Licking County; Washington and Keene townships, Coshocton County, should be rejected, because the voting was suspended for a short time while the officers were dining. The committee cannot sanction this practice of temporary adjournment; but inasmuch as it has obtained very extensively in the State of Ohio, and inasmuch as it does not appear in these cases that any person was deprived of his vote in consequence of the adjournment, they do not feel warranted in depriving



so large a number of electors of their votes on account of this unintentional and, in these cases, harmless errors of their officers.

The sitting member also claims that the returns from the first ward of the city of Zanesville should be rejected on account of the temporary absence of one of the judges and one of the clerks. The polls opened in this ward a few minutes after 6 o'clock in the morning, and closed at 6 o'clock in the evening. The counting out immediately followed, making a continual session of 13 or 14 hours. Instead of closing the polls, as was done in the townships before referred to, the officers took turns in going out to their meals. They were absent for this purpose about thirty minutes each. However reprehensible this temporary absence may be, it does not appear to be brought within the case of *Howard vs. Cooper*, cited by the sitting member. In that case one of the judges was absent all the time, and his place was not supplied, as it might and ought to have been, by the voters present, and the returns are signed by less than the number of judges required by law. In this case the proper number of officers officiate at the election, count the votes, and sign the returns. A few votes may have been taken in the absence of one of the officers, but a list of them was kept, and subject to his inspection and criticism on his return. There being no proof or suspicion of unfairness or illegal voting in the ward, the committee are of the opinion that the votes should be counted.

The sitting member further claims that the returns from Clinton Township, Knox County, should be rejected for the reason that the city of Mount Vernon and said township voted at one and the same precinct. The city of Mount Vernon was incorporated by a special act of the legislature in 1845. It lies in the center of Clinton Township, from whose territory it was taken. Under this special charter the township and city were authorized to hold all county, State, and national elections together, and from that time to this all such elections have been so held. In 1852 a general act was passed by the legislature "to provide for the organization of cities and incorporated villages," which makes each ward of a city an election district, and provides that the election shall be held at such places as the councilmen for such ward shall direct. Under this act no places for holding general elections in the city of Mount Vernon have ever been fixed. The law was not supposed to apply to this city so as to overrule its special charter. The city and township continued to hold their general elections together as before. Up to and including the election of 1866, fifteen State and four national elections had thus been held since the act of 1852. It is claimed now for the first time that the general election in the city of Mount Vernon, under the law of 1852, should be held separate from the township, in its own wards, and that the 1,100 votes of this precinct must be disfranchised as the penalty for so long misconstruing the law. The committee are inclined to think that the sitting member is right in his construction of the law, considered as an original proposition, but as 18 different elections preceding that of 1866 have been held since the act of 1852 without question, they do not feel justified in setting aside an election held in pursuance of a construction so long sanctioned by the authorities of the State.

The following table exhibits the conclusions to which the committee have arrived :

Whole number of votes returned for the sitting member .....	13, 228
Add votes improperly rejected .....	3

---

13, 231



Deduct deserters, 137, less the 11 in Pike Township.....	126	
Aliens .....	2	
Minors .....	8	
Non-residents .....	40	
Three votes changed in Jefferson Township.....	6	
Pike Township.....	216	
Linton Township.....	46	
Monroe Township.....	20	
	<hr/>	464
Corrected votes of the sitting member.....	12, 767	
Whole number of votes returned for contestant .....	12, 957	
Add votes improperly rejected.....	10	
	<hr/>	12, 967
Deduct insane or idiotic votes.....	7	
Minors.....	8	
Non-residents .....	22	
Corrupt voting.....	6	
Pike Township.....	76	
	<hr/>	119
Corrected vote of contestant.....	12, 848	
Corrected vote of sitting member.....	12, 767	
Majority for contestant .....	<hr/>	81

The committee report the following resolutions, and recommend their adoption :

*Resolved*, That George W. Morgan is not entitled to a seat in the fortieth Congress from the thirteenth congressional district of Ohio.

*Resolved*, That Columbus Delano is entitled to a seat in the fortieth Congress from the thirteenth congressional district of Ohio.

#### MINORITY REPORT.

Mr. Kerr presented the views of the minority as follows:

Mr. SPEAKER: The undersigned minority of the Committee of Elections, being wholly unable to concur with the majority in their conclusions, either upon the law or the facts in said case, respectfully submit the following statement of their views:

The election in the thirteenth congressional district of Ohio, October 9, 1866, was officially returned to the governor, and certificate issued to the sitting member upon the same, as follows:

Counties.	George W. Morgan.	Columbus Delano.
Coshocton.....	2, 468	2, 100
Knox .....	2, 537	2, 913
Licking .....	4, 020	3, 397
Muskingum .....	4, 203	4, 547
Total Morgan's vote .....	13, 228	12, 950
Total Delano's vote.....	12, 957	
Morgan's majority .....	271	



The following table illustrates the strength of political parties in said district during the years therein mentioned, and is given here because it possesses a general significance in connection with the whole case :

- 1860.—Democratic majority, 549; aggregate vote, 25,122.
- 1862.—Democratic majority, 3,064; aggregate vote, 22,462.
- 1864.—Lincoln's majority, 10; aggregate vote, ———.
- 1864.—Delano's majority, 239; aggregate vote, 23,560.
- 1865.—Morgan's majority for governor, 787; aggregate vote, 24,251.
- 1866.—Morgan's majority over Delano, 271; aggregate vote, 26,185.
- 1867.—Democratic majority, 2,178; aggregate vote, 27,906.

To be a legal voter in Ohio, six qualifications are necessary, to wit :

1. To be a male citizen of the United States.
2. To be a white male citizen of the United States.
3. To be 21 years of age.
4. To be a resident of the State one year immediately preceding the election. (Art. V, constitution of Ohio.)
5. To be a resident of the county thirty days next preceding the election.
6. To be a resident of the township or ward twenty days next preceding the election. (Swan and Critch., Stat., vol. 1, p. 543.)

There are also six disqualifications, and any citizen who has any one disqualification is an illegal voter :

1. Idiocy, } (Art. V constitution of Ohio.)
2. Lunacy, }
3. Conviction and sentence to the penitentiary under the act defining crimes and misdemeanors of the first class. (1 Swan and Critch., 417.)
4. For conviction and sentence of bribery at an election. (1 Swan & Critch., 545, 547.)
5. For conviction and sentence under the act to preserve the purity of elections, passed March 20, 1841. (1 Swan & Critch., 543.)
6. Desertion as defined by act of Congress of March 3, 1865. (U. S. Stat. at Large, vol. 13, p. 487.)

Several questions arise upon the pleadings and notices in this case, which, being essentially preliminary to the consideration of the case upon the evidence, demand attention. The requirement of the statute on this subject is entirely clear and seems to be imperative, that—

Whenever any person shall intend to contest an election of any member of the House of Representatives of the United States, he shall, within 30 days after the result of such election shall have been determined by the officers or board of canvassers authorized by law to determine the same, give notice in writing to the member whose seat he designs to contest of his intention to contest the same, and in such notice *shall specify particularly the grounds upon which he relies in the contest.* (1 Brightley's Digest, 254.)

The contestant's notice to the sitting member contains twenty-two specifications, of which but three allege that illegal votes were cast for the sitting member. The seventeenth specification avers that a large number of unknown non-residents were brought into the district on the night before the election and voted illegally for the sitting member; but there was no testimony offered by the contestant to prove that any one of the persons so described voted for the sitting member, and this specification, therefore, needs no further attention. The other two specifications referred to read as follows :

2. Six hundred and twenty-five persons, not legally entitled to vote, were improperly and illegally allowed to vote at said election, and did cast their votes for you.

18. Illegal votes were cast for you at said election as follows : In Clinton Township, Knox County, 25 votes, and in each of the townships of Jefferson, Union, Butler, Jackson, Brown, Howard, Harrison, Clay, Pike, Monroe, Pleasant, Morgan, Berlin, Morris, Miller, Middlebury, Wayne, Liberty, Milford, and Hillier in said Knox County, 10 votes. In the township of Newark, in the county of Licking, 25 votes, and in each of the townships of Fallsbury, Perry, Hanover, Hopewell, Eden, Mary Ann, Madison, Franklin, Washington, Newton, Licking, Burlington, McKean, Granville, Union, Bennington, Liberty, St. Albans, Harrison, Hartford, Monroe, Jersey, Bowling Green, and Lima in said Licking County, 10 votes. In the township of Washington, in Muskingum County,



25 votes, and in each of the townships of Monroe, Highland, Union, Rich Mill, Meigs, Adams, Salem, Perry, Salt Creek, Blue Rock, Harrison, Wayne, Jefferson, Muskingum Falls, Springfield, Newton, Jackson, Licking, and Hopewell 10 votes. In the township of Tuscarawas, in the county of Coshocton, 25 votes, and in each of the townships of Adams, Oxford, Linton, Lafayette, White Eyes, Crawford, Mill Creek, Keene, Franklin, Virginia, Jackson, Bethlehem, Clarke, Monroe, Jefferson, Bedford, Washington, Pike, Perry, New Castle, and Tiverton in said Coshocton County, 10 votes.

The sitting member, in connection with his answer to the notice and specifications of the contestant, excepted, in writing, to the sufficiency in law of every one of the specifications. The sufficiency of those specifications was submitted for determination to the committee by the sitting member, both in his printed brief and his oral argument before the committee. It is, therefore, the obvious duty of the committee to consider and decide that question. It is exceedingly material to the proper and just determination of the whole case and to the legal and substantial rights of the parties. We inquire, then, do the second and eighteenth specifications comply, in terms or spirit, with the express requirement of the law? Do they "*specify particularly the grounds upon which he relies in the contest*"

Substantially, the allegation in each specification is that illegal votes were cast for the sitting member. It cannot be said, without doing most manifest violence to the intention of the law, that such general and vague allegations can put the sitting member in possession of the *grounds* of contest. They do not aver in what the illegality of the votes consists. They do not state *facts* from which the illegality results as a conclusion of law. They only state the *conclusion of law* itself, and entirely omit the recital of the reasons or facts that are indispensable to sustain the conclusion. This is a violation of most obvious principles of correct pleading, and ought not to be approved. There is nothing in the nature or circumstances of this case to prevent or even render inconvenient a fair and full compliance with this law in the statement by the contestant of his *grounds* of contest. The object of all pleading, whether in ordinary actions at law or in contested elections, or in any cases required to be subjected to judicial or even *quasi* judicial determination, is to limit, to restrict, to narrow, as much as practicable, the range and scope of the investigation, to exclude unnecessary latitude of inquiry, to disclose at the outset the difficulties to be overcome by testimony, or the specific conclusions intended to be established by proof, to the end that such litigation may be simplified and cheapened, not made interminable and unnecessarily expensive, and especially that no advantage shall be taken or injustice done, against which it is impossible to guard by reason of the uncertainty and vagueness in the statements of the *grounds* of controversy. The importance of these principles has been well illustrated in this case. The contestant wholly fails to specify the *grounds* of contest in his notice, and then proceeds in his own order to make his proofs; but in reference to a large number of voters, (alleged to have been deserters,) takes his testimony at so late a day in the time allowed as to absolutely preclude the taking of counter-testimony by the sitting member. It was the intention of the law of Congress to prevent such results by requiring reasonable definiteness and certainty in the statement of the grounds of contest.

These principles have been repeatedly declared and sustained both in the English Parliament and in Congress. They were asserted in the case of Michael Lieb, (1 Con. El., p. 165.) In that case the reported decision is as follows:

A petition impeaching the return of any person as a member of the House ought to state the grounds on which the election is contested, with such certainty as to give



reasonable notice thereof to the sitting member, and enable the House to judge whether the facts, if true, be sufficient to vacate the seat.

Evidence ought not to be permitted of any fact not substantially averred in the petition.

The case of *Easton vs. Scott* (Con. El., p. 272) is directly in point. It was there held, that "if voters are objected to on account of the want of legal qualifications, the party excepting to them should, before taking testimony, give notice to his adversary of the *particular* qualifications in which they are deficient; a *general averment in the notice that the votes are illegal is not sufficient*; and the names of the persons excepted to must also be stated." See, also, the reasoning of the committee on page 285.

The same principles are declared in the case of *Wright vs. Fuller*, (Bartlett's Con. El., p. 152,) and in the case of *White vs. Harris*, (Id., p. 257.)

In *Kline vs. Verree*, (Bartlett's Con. El., p. 381,) the point was again considered, and it was there held that "where the contestant failed to specify with *particularity* the grounds of the contest, the requirements of the statute were not complied with." In that case the sitting member took exception to the notice of the contest as vague and insufficient, and Mr. Dawes, then and now chairman of the Committee of Elections, in his very able report, said:

The committee were compelled, therefore, to pass upon the sufficiency of this notice before considering the merits of the case. They heard counsel of sitting member and contestant upon this preliminary question, and gave to its consideration much time and attention. As a question of practice it is of importance.

After quoting from the statute of 1851, Mr. Dawes proceeded:

Did his notice specify *particularly* the grounds of this contest? It is proper to state that the contestant waived before the committee all grounds of contest except such as may be found in the last clause of the tenth specification. The attention of the House is, therefore, called to this specification, and to the *particularity* of the grounds of contest which that clause in it contains. It is in the following words:

"10. The examination of the tally papers relating to said congressional election, and deposited in the office of the prothonotary of the court of common pleas, and deposited in the several ballot-boxes of said congressional district, *together with a recount of all the ballot-boxes in said district at said election, will show that you were not elected and that I was elected.*"

Without subjecting this specification to the criticism that the last clause is inseparably connected with the first, so that the whole must be taken together and constitute but one allegation, quite different in its meaning from any just interpretation of the last clause, if standing alone, suppose it were a simple allegation, standing alone, that "a recount of all the ballot-boxes in said district will show that you were not elected and that I was elected," in what just sense could it be said that such an allegation is a compliance with that provision of law which requires of the contestant to "*specify particularly* the grounds upon which he relies in the contest?" What is it more or less than the assertion, "You were not elected and I was?" or "I received more votes than you." The common law pleading, "you did" and "I didn't," would have every element of "*particularity*" in it which is contained in such a specification. The only precedent under existing laws approaching this in vagueness and generality which has come under the notice of the committee, is that of *Vallandigham vs. Campbell*, in the thirty-fifth Congress. But there is this to distinguish that case from the present one. In that case the sitting member took no exception to the notice of contest for want of particularity when served upon him, or in his reply thereto, or during the taking of testimony; but, on the other hand, filed his own answer in the same general terms, and the contest proceeded without objection on either side till the hearing before the committee, where the objection was first raised, when it was too late for either party to retrace his steps or correct the mistake. Whatever might have been the opinion of that Congress as to the sufficiency of those specifications, it might well have been held in that case—indeed, it could not well have been held otherwise—that any such defect in specification or answer had been waived by the parties. But in the present case there could be no such waiver. The exception to the sufficiency of this motion was taken at the earliest practicable moment, and in time for the service of a new notice. It was also renewed at the taking of the testimony, and at every stage of



the hearing. There was no excuse offered for a non-compliance with the law in this particular, and the committee could discover none.

The question was thereupon presented to the committee, *shall parties contesting seats in the House of Representatives be held to conduct that contest according to the requirements of the statutes of the United States, or be permitted, without excuse, to depart from and disregard the plainest provisions of those statutes in this regard, founded in the plainest principles of practice and fair dealing?* Long before the statute was enacted, parties to contested elections, both in England and this country, were held to a compliance with the same rule. Lieb's case, Clark & Hall, 165; Luttrell vs. Hume, 4 Doug. Elect. Cases, 25; Skerret's case, 2 Pars., 509; Carpenter's case, 2 Pars., 537; Kneass's case, 2 Pars., 553.) Several of the cases here cited are from the State of Pennsylvania, and, so far as the local law of the State where this contest has arisen forms a rule for the guidance of the parties, are clear and decisive against the sufficiency of this notice of contest. And the committee, after a careful consideration of this question, have come unanimously to the conclusion that this notice is in no just sense a conformity with the requirements of the statute or the well-settled rules which should govern in all contests of this kind.

The committee have not felt at liberty to pass over this entire disregard of well-settled rules and statute enactments without notice, lest proceedings like these should grow into precedents, and parties to contest should hereafter meet committees, not for the purpose of trying prepared and defined issues, but for the purpose of making vague and uncertain complaints and indulging in endless and unsatisfactory discussions.

This reasoning seems to us conclusive and unanswerable. We conclude, therefore, that the specifications referred to are too vague and uncertain to satisfy the imperative requirements of the law, and that they did by reason thereof work undue prejudice to the sitting member in his defense, and that the testimony taken under them ought not to be considered by the committee or House.

But the majority of the committee, for reasons no doubt satisfactory to themselves, wholly ignore this great question, and proceed at once in their report to consider and decide the case upon other grounds. It becomes our duty, therefore, not to limit our inquiry by reason of the above conclusion, which, in our judgment, is alone fatal to the claims of the contestant, but further to examine the case upon all the facts and principles of law involved in the very voluminous record. In doing this we will first examine the allegations and proof of the contestant.

In Ohio the legal mode of voting is by the secret ballot. The highest and best official evidence of the number of votes, and for whom they were cast, is the returns of the election officers, made in accordance with the law. This compliance with the law is not required to be absolutely exact and technical; but the statute of Ohio (1 Swan & Critch, 539, § 33) provides "that no election shall be set aside for want of form in the poll-books, provided they contain the substance." It is an established rule in the congressional adjudication of election cases that where the law of the State under which an election was held has received judicial construction in the courts of that State, that construction shall be accepted as binding upon Congress. In the case of *The State of Ohio, &c., vs. Ritt*, (American Law Register for December, 1867, p. 88,) Judge Brinkerhoff, a member of the supreme court of that State, in rendering the decision of the district court, used the following language: "It was correctly stated by counsel, as a universal law governing all elections, that, throwing aside mere forms, the only question is, who has received the most legal votes? The point as to the want of the signatures of the judges to the papers touched a mere matter of form. The object was only to authenticate the paper, and it was competent to be authenticated by other means as it was by the oath of the recorder."

With some diversity in the rulings of the courts and of Congress on the subject, the better opinion seems to us to be, that the highest and best evidence, outside the record, for whom any elector intended to vote, is the testimony of the elector himself; but, where the voting is by the secret ballot, the elector cannot be required to testify for whom he voted;



and if he declines so to testify, it is then competent to show by other evidence for whom he voted. But, in the latter case, the evidence should be in character of the highest order attainable under the circumstances, and, in legal effect, so clear and strong as to preclude any reasonable doubt as to the fact.

Keeping in view these rules and principles, we proceed, first, to consider the case as to

#### LINTON TOWNSHIP.

It is claimed by the contestant that the entire vote in this township should be rejected, because the poll-books were not signed by the officers of the election, and because said officers were guilty of fraud. But in his notice to the contestee of the grounds of his contest he does not aver that the poll-books were not signed. He is, therefore, precluded by his own neglect from taking advantage of the fact, if true. But is it true? The law of Ohio requires that the names of the voters shall be entered upon the poll-books, and that after the poll-books are closed the poll-books shall be signed by the judges and attested by the clerks, and the names therein contained shall be counted and the number set down at the foot of the poll-book. At the election in question this was done, except the signing. The statute further requires that after the examination of the ballots shall be completed, the number of votes for each person shall be enumerated, under the inspection of the judges, and be set down opposite to their names, and that the judges of the election shall certify to the same, which certificate shall be attested by the clerks, *all of which was done*. (1 Swan & Critch, pp. 533, 534, 535. The object of the election law is to require the officers to certify the result of the election. That they have explicitly done in this case, and we submit have thus *substantially*, although not technically, complied with the law.

The final certificate shows that the contestant received 101 votes and the contestee 200 votes; but the poll-book shows there were only 300 electors recorded as voting. This discrepancy may be the result of a clerical or typographical error, and is deemed too immaterial to cause a rejection of the poll or to demand further notice.

Fraud is alleged to have been committed by the election officers. In answer to this charge the contestee took the depositions of all the officers of said election, all of whom testify that the election was fairly conducted and free from any taint of fraud. The contestee further obtained the depositions of T. J. Platt, H. W. Duling, Joseph Love, Richard Fowler, William Love, E. L. Duling, W. H. Vickers, Richard Carroll, James McClain and John V. Heslip, alleged in the committee, and not denied, to be leading and prominent citizens and republicans of the township, who voted for the contestant, all of whom testified in substance that, before said election, the character of the election officers for integrity and veracity was above reproach. Major Platt testified as follows:

THOMAS J. PLATT, of lawful age, being first duly sworn, deposes and says:

Question. Please state how long you have known Zachariah Baker, S. M. Bassett, and Abram Craver, judges, and Robert Catherwood and Robert Latham, the clerks of the October election for State and county officers held in Linton Township, Coshocton County, Ohio, in the year 1866.—Answer. Well, sir, I have known them ever since they have been in this township; as near as I can come at it, I believe I have known them from ten to twenty-seven years.

Q. Please state what is their general reputation in the community in which they live, as men of integrity and veracity; is it good or bad?

(Objected to.)



A. Their general reputation is good.

Q. Please state to what political party you belong, and for whom you voted for member of Congress at the October election, 1866.—A. I belong to what is known as the Union party, and I voted for Columbus Delano.

Q. Please state how long you served in the Union army during the war against the rebellion, and what rank you held.—A. I served about four years and eight months, first as a private, non-commissioned officer, second and first lieutenant, captain and major.

Q. Please state whether you have been informed of the object for which you had been subpoenaed until called to the stand as a witness.—A. My father told me I was subpoenaed.

Cross-examined:

Q. Assuming it as proved that more than 120 ballots for Columbus Delano as congressman were delivered to this board to be deposited in the ballot-box; that the ballot-box remained all the time under the personal care and inspection of this board; and that when the ballots were counted out there were only one hundred for said Delano, what have you then to say as to the integrity of this board?—A. I, sir, entertain the opinion that they were honest and did their duty as officers of that board.

Q. Upon the assumptions contained in the preceding question, how is it possible for them or all of them to be honest?

(Question objected to as argumentative.)

A. Well, sir, I am of the belief, knowing these men ever since my childhood, or a portion of them, that they have been considered honest men all this time; still, I cannot believe that there has been any fraud in this election on their part done willfully.

Q. You do not answer my question. It may be very hard for you to believe that these men have acted corruptly; but notwithstanding such may be the case, I ask you how you can explain the facts stated in the question in any manner consistent with the honesty and integrity of the board, or a portion of them?

(Objected to as speculative and argumentative.)

A. It is not hard for me to believe it from the fact that I have before stated that I have known them ever since my childhood, or a portion of them, and to the best of my knowledge they have always passed as honest, upright men since I have known them. I have a better opinion of them than to think they would stoop so low as to commit an error of this kind willfully.

Q. You still don't answer my question. How can it be possible for them, or all of them, to be honest if the facts are as stated in my former question? That is what I want you to answer.

(Objected to as speculative and argumentative.)

Q. You have hesitated quite a considerable time; please answer the question.—A. Well, I believe, then, such a thing might be or could be a mistake in tallying, and still I must believe, and do believe firmly, that so far as they were concerned at the ballot-box on the day of said election, they did their duty as officers.

Q. I still think you have not answered my question; but as you have suggested that there might be a mistake in tallying, would it not be very easy to correct such a mistake by examining the ballots themselves, which the law requires shall be preserved?—

A. Certainly; a mistake of that kind could be corrected.

Re-examined:

Q. When it is considered that all of the officers of that election have testified that it was conducted with fairness and honesty, and when it is further considered that shortly after the election a paper was carried round to obtain the signatures of persons who claimed to have voted (and many of whom did vote) for Mr. Delano, is there not as much reason to believe that some of the signers of that paper, not wishing to confront their own signatures, have testified falsely, as that the officers of the election have done so; that is, is it not as reasonable to suppose that certain voters have testified falsely as that the officers of the election have done so?

(Objected to.)

A. It is.

Re-cross-examined:

Q. Did you sign such a paper?—A. I did, sir.

Q. Do you think that the fact of your having signed such a paper had any tendency to lead you to swear falsely with reference to your vote?—A. No, sir.

Q. Do you think it would have any such tendency with the other persons who, like you, had signed it?—A. Well, I think it would with some men.

T. J. PLATT.

It is deemed unnecessary to incorporate more of the testimony on this



point; but it may all be found in H. Mis. Doc. No. 38, part 2, pp. 472, *et seq.*

It is further alleged by the contestant, not in his notice, but in his brief, and attempted to be proved, that said officers violated the law of Ohio by excluding from the election room his friends; but the evidence wholly fails to sustain the allegation. The great preponderance of the testimony establishes the fact that all who desired to enter the room were permitted to do so, but that two persons, Thomas F. Smith, and John S. Williams, the first a republican and the last a democrat, were excluded from the room in consequence of their noisy and disorderly conduct. We refer to H. Mis. Doc. No. 38, part 2, pp. 463, *et seq.* We are, therefore, fully satisfied that these officers did, in every respect, in good faith and impartially, discharge their duties in the conduct of that election, and that to reject the poll of this township on any allegation of fraud against them would do great violence to the law applicable to the case and to the clear preponderance of the evidence.

The parties to this contest took the testimony of all the electors who voted at that election in Linton Township and were in the township when the depositions were taken, and also examined witnesses to show the political relations of electors then absent from the township, whose depositions could not be obtained. The weight of all this testimony, giving to it the most liberal construction in favor of the contestant, shows that 123 electors *intended* to vote for him, and that 177 voted for the contestee. It is impossible from the evidence satisfactorily to explain the discrepancy between this testimony and the official returns. One hundred and eight persons testified they had voted for the contestant. The weight of evidence, construed as above mentioned, shows that sixteen other electors were republicans. After an examination of the whole testimony in detail, we can only attribute its singular character to the infinitely diversified and the unknown influences, motives, considerations, and circumstances that controlled the respective witnesses, and the imperfections, mistakes, and blunders which so often characterize the conduct of electors. Such modes of attacking official returns of elections have always been subjected to more or less criticism, and in the case of *Van Rensselaer vs. Van Allen*, 1 Con. Elec. Cas., p. 76, the committee very justly and forcibly remark that:

The petition stated that numbers of persons had sworn that they had voted for the petitioner, whose votes, by the returns, had not been counted. On this it was observed that the committee did not consider this allegation of a nature proper to engage their attention. It was presumed that the House of Representatives would never institute an inquiry into such a species of evidence. It was extremely difficult for a man to swear that he had positively voted by ballot for a particular candidate, since it is well known that persons had, on such occasions, frequently put in a ballot for the person he had not intended to vote for. In the hurry and confusion which often take place the ballots get shifted, and one is put in instead of another.

In this case, for example, it appears in evidence that Ephraim Dally, intending to vote for Mr. Delano in Hillier Township, voted a tax receipt; that Thomas D. Coc voted for Mr. Morgan in Milford Township, when he intended to vote for Mr. Delano; that Anthony P. Burkey, intending to vote for Mr. Morgan, is not certain whether he voted for Mr. Delano or Mr. Morgan; and that William H. Foot, in Berlin Township, intending to vote for Mr. Delano, is uncertain whether he voted for the one or the other.

We are therefore unable to conclude that any rule of law, or any precedent or justice to the parties to this case, demands the rejection of this poll. The result has not been shown to be "so tainted with fraud that the truth cannot be deduced therefrom." The very contrary is the



case. The proof shows that 123, as above stated, were intended to be cast for the contestant, and the residue of the poll, 177, for the contestee, and the precedents both in Congress and in the civil courts require that the electors should be counted for the respective candidates accordingly. There is no evidence of fraud upon the part of the officers of the election.

#### MONROE TOWNSHIP.

The official returns of this township gave the contestee 97 votes, and the contestant 64 votes. The respective parties examined as witnesses every elector in this township and proved for whom he voted for member of Congress, except certain persons, numbering 17, who were either dead or absent, and as to them the parties admitted that 8 voted for the contestee and 9 voted for the contestant, giving, in all, 74 votes to the contestant and 87 to the contestee. In other words, by the testimony taken and the admissions of the parties the vote is corrected and rendered certain beyond a doubt. (H. Mis. Doc. No. 38, part 1, p. 447, and H. Mis. Doc. No. 38, part 2, p. 507.) If, therefore, there was any fraud practiced or attempted at this poll, it has deprived neither party of votes to which he was entitled. The result has not been shown to be "so tainted with fraud that the truth cannot be deduced therefrom." The certificate may well be rejected, for it is only *prima facie* evidence of what it contains, and is not absolutely obligatory upon the House. This is fully authorized by the case of *Chrisman vs. Anderson*, in 1860, (Bartlett's Contested Election Cases,) page 328, in which the House held that "it is the duty of the House in contested cases to go behind all certificates for the purpose of correcting mistakes brought to its notice." But the contestant alleges fraud in the officers of this election. The officers, of whom two were republicans and three were democrats, were all examined, and all testified that there was no fraud committed by them or with their knowledge. There was other testimony tending to excite suspicion as to the conduct of one of the officers, but it is, in our judgment, entirely insufficient to justify the rejection of the vote of the township, as established by the evidence and the admissions of the parties. It is impossible for us to perceive on what ground of law, or political or moral ethics, votes should be refused to any candidate for whom, by legal evidence, they are shown to have been cast. To reject such votes upon legal technicalities violates every precedent in Congress, and makes Congress assume the odious responsibility of *electing* members of Congress. We therefore find the contestant entitled to 74 votes and the contestee to 87 votes.

#### JEFFERSON TOWNSHIP.

In this township there is no evidence in detail of the persons for whom each elector voted. The official return imports *prima facie* verity, and the burden of proof to destroy this legal presumption is upon the contestant. He alleges fraud in the conduct of the election by one of the officers. He takes the testimony of Wm. P. Wheeler to prove that 96 electors voted for him. But Wheeler only states, in reference to the vote of the township:

I know that it has been canvassed. I am not sure my count is right. It foots up 96 votes with me this morning.

• This is the substance of Mr. Wheeler's testimony, and it is too frivolous for comment, and does not attain the dignity of *hearsay* testimony. He gives the names of ninety-six electors, but there is no evidence that



any one of them even declared that he voted for the contestant. Francis Walker is sworn to prove that Henry Metham, one of the judges, changed three republican for democratic tickets. He states that he was in the room during the counting, sitting eight or ten feet from the ballot-box, and that the room was lighted by two lamps; but the testimony of Lyman, and of all the election officers except one, who was dead, shows that there were four lamps; he further states that he was able to recognize the republican tickets referred to because they had the American eagle at their head, and the democratic tickets because they had a shield or coat of arms at their head; but T. W. Collier, editor of the *Age*, the organ of the republican party in Coshocton County, says that a large portion of the republican tickets had no engraving or device at their head, and those which had any such engraving or device had a flag. The election officers (except one who was dead) all testify that there was no fraud at this election of the kind alleged, or of any other kind, and their general reputation for integrity and veracity is sustained by the testimony of three leading republicans of the township, and is unimpeached by the contestant. Walker is contradicted in every material statement made by him by the testimony of several witnesses, and the evidence on every material point not only fails to sustain him but overwhelmingly contradicts him.

In 1865, at the gubernatorial election in this township, the contestee, then a candidate for governor, received 122 votes, while his opponent only received 79, making Morgan's majority 43. In 1866 the official return shows Morgan received for Congress only 119 votes and the contestant received 93, reducing Morgan's majority to 26. (H. Mis. Doc. 38, part 1, p. 361, *et seq.*, and H. Mis. Doc. 38, part 2, pp. 300, 378.)

In view of the foregoing considerations and of all the evidence in reference to this township, we feel compelled to find that the poll in this township is entirely free from fraud or unfairness of any kind that could do prejudice to either party.

#### PIKE TOWNSHIP, KNOX COUNTY.

In this township it is alleged by the contestant that Salathiel Parrish, one of the judges, was a deserter from the draft of 1864, and therefore incompetent, from disability as a citizen and elector, to act in that capacity. We consider the alleged ground of incompetency utterly untenable and unsound. But we will not take time in this connection to discuss it. We observe, first, then, that no such ground is specified in the contestant's notice, and it is, therefore, waived and not available now. Nor is it proved in this case that Salathiel Parrish, the alleged deserter, and Salathiel Parrish, the election officer, are the same person. But it is proved by the testimony of David Porch, (H. Mis. Doc. 38, part 2, pp. 276, *et seq.*) that Salathiel Parrish, who was the election officer, had furnished, according to law, a substitute, and was released from the draft in 1864. The case of *Howard vs. Cooper* (Con. El., vol. 2, p. 282) has therefore no application here. In that case but two persons pretended to act as judges. There was, therefore, no compliance with the law; but in the case under consideration there was an actual compliance with the law, and even if Parrish were incompetent for the reasons alleged, yet, no fraud being alleged or proved, he was a judge *de facto*, and the election was clearly valid. (*Milliken vs. Fuller*, Bartlett's Con. El. Case, p. 176; *Ohio, &c., vs. Ritt*, Am. Law Reg. for Dec., 1867, p. 94; *Barrett vs. Reed*, 2 Ohio, 410; *Johnson vs. Stedman*, 3 Ohio, 96; *Elden vs. Sexton*, 5 Ohio, 216.)



The laws of Ohio (S. and C., sec. 20, p. 533) provide that if either of the judges of the election should be a candidate for a State or county office, it shall be the duty of the electors present to elect a suitable person to act as judge in the place of said candidate.

In the contested election case of Grosvenor, republican, *vs.* Golden, democrat, before the senate of Ohio in 1865-'66, one of the grounds of contest was that Erwin Moore, one of the judges of election, was a candidate for county commissioner, and was thereby precluded by the express terms of the statute from acting as judge of the election. The senate which tried and decided this contest was three-fifths republican. In speaking of a judge of the election being a candidate, the majority of the committee, in their report, say :

The committee find this contrary to a provision of the statute. But they further find that he (Moore) did not act *corruptly*, but in *ignorance of the law*. The committee regard said action as irregular, yet they are of opinion, and so find, that all the really essential requisites to constitute a valid election were observed in this case. The election was held at the proper time and place and by competent authority, (to wit, the township trustees.) That there was no evidence of fraud in conducting the same, and no doubt about the result. In view of these facts, we are unable to assign any satisfactory reason for rejecting this return. \* \* \* The evidence is clear that the election was conducted with entire fairness. We are therefore of opinion that we can neither allege want of authority in the election board, fraud in conducting the election, nor any uncertainty about the result. The supreme court of this State have decided in the cases of Ohio *vs.* Choate, 11 O. R., p. 511; Ohio *vs.* Alby, 12 O. R., p. 16; Ohio *vs.* Jacobs, 17 O. R., pp. 151, 152, that where an officer acts under the *color* of authority, his acts will be binding, although in point of law and right he was no such officer. And if the acts of a person who acts by color of authority alone will be sustained, there is certainly much greater reason for sustaining the acts of a real officer, although the mode of his action has been irregular.

And the majority of the committee reported the following resolution :

*Resolved*, That W. Reed Golden is entitled to a seat in this house as a senator from the ninth senatorial district of Ohio.

And the resolution was adopted by the senate by a vote of 23 against 11. (Senate Journal, 1866, pp. 182, 183.)

#### HARRISON TOWNSHIP.

The claim of the contestant for the rejection of the poll in this township, being based upon no allegation or proof of actual fraud, and having been abandoned before the committee, will not be further considered by us.

#### COUNTING BEFORE SIX P. M.

The contestant claims that certain polls should be rejected because the officers commenced counting out before 6 o'clock p. m. on the day of election, contrary to law. We do not think this objection sufficient to reject the poll. It is mainly technical. It does not appear that any substantial prejudice was done to any one by the premature counting. And, on this point, we are content to follow the rule established by the senate of Ohio, in February, 1866, in the case of Grosvenor *vs.* Golden, reported in Ohio Senate Journal, for 1866, pp. 181 *et seq.* We cite the following paragraphs from the report of the committee in that case, which was adopted by the senate by a vote of 23 to 11, the senate being republican by a large majority, and the rejected claimant for the seat being himself a republican :

3. That the judges in Good Hope Township, Hocking County, opened the ballot-box and commenced counting out the votes before the election was closed.

4. That the judges in Washington Township, in said county, only read the heads of the *unscratched* tickets. The committee find that both these charges are true in point of fact; and we find that in both cases the mode of counting out the votes was irregu-



lar and improper; but we are of opinion that it was only a mistake on the part of the trustees as to the mode of performing their office; that they did perform all the acts which were really essential to ascertain the verdict of the electors, and to preserve the evidence of that fact. They received the ballots, placed them in the box, kept a list of the voters, strung and preserved the tickets. They made a mistake in the time and manner of counting, but this did not impair the certainty of the evidence on the main point, and the committee regard it as their duty to correct all mistakes made in counting the votes, whether the mistake related to the manner or result; the evidence showing no fraud in either of these elections, but the proof being that the tickets in the ballot-boxes are the same put in by the electors whose names are on the poll-books, and that the tickets are unchanged. The committee are of opinion that they could not be justified in setting aside the vote of a township simply because an election board, through ignorance or otherwise, mistook, in an unessential particular, the correct mode of performing their office, provided the same was done in such a manner as to afford satisfactory evidence of the true result of the voting, which we find was the case in these two townships.

## ALIENS.

Michael Scully is alleged to have been an unnaturalized foreigner. The proof shows, however, that he had become a resident and made his declaration of intention to become a citizen of the United States on September 5, 1855, at Albion, New York, (H. Mis. Doc. 38, part 2, p. 220,) and made his final declaration and was naturalized on September 29, 1866, at Newark, Ohio, and was a citizen of Ohio, (H. Mis. Doc. 38, part 1, pp. 551, 81, *et seq.*) There is other testimony in reference to this voter which shows conduct on the part of other persons of a questionable character, but it does not disprove or materially affect the facts above stated. John Dermody is also alleged to have been an illegal voter. The proof shows that he came to the United States in June, 1863, and entered the military service thereof in May, 1864, and was honorably discharged over three months thereafter, in September, 1864, at the expiration of his term of service, (H. Mis. Doc. 38, part 2, p. 233,) and was therefore entitled to naturalization under the law of Congress of July 17, 1862, (2 Brightley's Digest, p. 5,) without any previous declaration of intention, and without the previous residence of five years, and was in fact naturalized before the election at which he voted. But his naturalization was not obtained on the ground of his military service. Does this fact vitiate his naturalization? We think, upon well-established rules of law, that such an act, if legal and proper upon any grounds at the time it is done, is not affected or invalidated by the fact that at the time it was done an untrue or insufficient ground was assigned before the court. We therefore hold that both these men were legal voters, and should be counted for the contestee. We further observe as conclusive against their rejection, that they resided and voted in Mount Vernon, and in the contestant's notice to the contestee there is no allegation that any illegal votes were cast in Mount Vernon, which is divided into wards that constitute separate election precincts under the law of Ohio.

## REBEL SOLDIERS.

It is alleged that Thomas Thatcher, Frank Towell, William Springle, Thomas Darr, David Kendall, James Goodin, Gilmore Kendall, George W. Stitely, and John Maddox, voted for the contestee, and had been in the military service of the Confederate States in the late rebellion, and were therefore illegal voters, and should be rejected. We observe, first, that the testimony entirely fails to establish that James Goodin, William Springle, or Thomas Darr were in that service at all. The testimony shows that the others were in that service, but were citizens of Ohio. No law of Ohio, or constitutional provision, or act of Congress,



disfranchises or attempts to disfranchise such citizens in Ohio. We hold, therefore, that they were legal electors, and cannot be rejected by Congress in this case. The State of Ohio alone has the right and power to regulate the suffrage of her citizens.

#### MINORS.

The contestant avers that George B. Lewis, George W. Wheeler, John Bucksbarger, J. Willis Chapman, James K. T. Redman, John Kelso, Peter Gibbeaut, jr., Rufus H. Lane, and Richard Cody, were minors and illegal voters under the laws of Ohio, and voted for the contestee. The father of George B. Lewis testifies that his son was of age when he voted. (H. Mis. Doc. 38, part 1, pp. 93-95.) The son himself testifies in like manner. No other proof overcomes this testimony. The father of Richard Cody, witness for contestant, swears his son did not vote at all, but remained at home all that day. The proof shows that George W. Wheeler and John Bucksbarger resided and voted in their respective wards in the city of Newark, and that John Kelso and Rufus H. Lane resided and voted in their respective wards in the city of Zanesville, and there is no allegation in contestant's notice of the grounds of contest that any illegal votes were cast in said wards. We hold the proof thereof, inadmissible, and that the objection to these voters is waived by the contestant. We find that the votes of Chapman, Redman, and Gibbeaut were illegal by reason of minority, and reject them from the contestee's count.

#### LEGAL VOTES REJECTED FOR CONTESTANT.

The contestant claims that Thomas Boyle, Pleasant Township, Knox County, W. F. Herrick, Clinton Township, Knox County, John Brown, Liberty Township, Knox County, William H. Foote, Berlin Township, Knox County, B. F. Spencer, Bowling Green Township, Licking County, William P. Hay, Coshocton Township, Coshocton County, Tobias Kepner, Coshocton Township, Coshocton County, Isaac Hook, Bethlehem Township, Coshocton County, Lewis Quigly, fourth ward, Zanesville, Elza A. Dye, Meigs Township, Muskingum County, were legal electors in their respective precincts, and desired to vote for him, but were illegally refused. We find from the evidence that the votes of John Brown, William H. Foote, B. F. Spencer, Isaac Hook, and Elza A. Dye were legal and ought to have been received for the contestant. The proof shows that Thomas Boyle, in August, 1866, determined to remove to and become a citizen of Iowa, and sent some of his stock there by his son at that time, and on October 2, 1866, he had a public sale of his property, and on the day following his wife started for his new home by railroad, and he started two horses and a buggy westward the same day. The election was on October 9, 1866, and on the 16th of that month he left for Iowa. (H. Mis. Doc. 38, part 2, pp. 272, 273, and part 1, p. 46.) The proof shows that W. F. Herrick left Ohio and moved to Illinois in September, 1865, with the intention to purchase land and cultivate some fruit, and to remain there an indefinite length of time, and while there he kept house, but returned to Ohio August 1, 1866, and attempted to vote for the contestant, and his vote was refused by an exclusively republican election board. The proof shows that William P. Hay moved from Ohio to Pennsylvania in November, 1865, "for the purpose of engaging in business as a commercial broker," and that "the time was indefinite" during which he intended to remain there, and



that he did engage in business there, but returned in September, 1866, to Ohio and offered to vote for the contestant. The testimony shows that Tobias Kepner was a citizen of Ohio in 1865, and then removed to Iowa to engage in business with the intention to remain an indefinite period of time, and took his family with him, and did engage in business there, but returned in the summer or fall of 1866 to Ohio and attempted to vote, but it is not clear for whom he desired to vote. His vote was rejected. (H. Mis. Doc. 38, part 2, pp. 361-364, and part 1, pp. 334-340.) The testimony shows that Lewis Quigley was a citizen of Ohio in 1865 and then removed with his family to the West, in his own language, with the intention "in case I could do better there than here to remain, if not to return," and that he did settle in Illinois and remained there three months, and then returned to Ohio and offered to vote for the contestant in the city of Zanesville, and was refused. There is no allegation in contestant's notice to contestee that any legal votes were rejected for him in that city, and objection to the exclusion of Quigley's vote is therefore waived.

The statute of Ohio provides that "if a person remove to another State, *with an intention of remaining there for an indefinite time, and as a place of present residence*, he shall be considered and held to have lost his residence in this State, notwithstanding he may entertain an intention to return at some future period." (1 Swan & Critch., p. 543, 544.)

We hold, therefore, in view of all the testimony, the law of Ohio, and the general principles of law applicable to the case, that it is entirely clear that Thomas Boyle, W. F. Herrick, William P. Hay, Tobias Kepner, and Louis Quigley had severally lost their residence and right to vote in Ohio, and had not regained it before the election, and were not legal electors at that time, and were properly rejected.

*Non-residents who voted for the sitting member.*

We find upon examination of the evidence that the following persons who were non-residents, and therefore not legal electors, voted for the sitting member:

COSHOCTON COUNTY.

Joseph Fiddy, H. Mis. Doc. 38, part 1, pp. 316, 330; Charles Wells, H. Mis. Doc. 38, part 1, pp. 317, 330; William Shaw, H. Mis. Doc. 38, part 1, pp. 317, 330; James Litchfield, H. Mis. Doc. 38, part 1, pp. 371-373, 385; Joseph Bartholow, H. Mis. Doc. 38, part 1, pp. 376, 385; Rodney Reed, H. Mis. Doc. 38, part 1, pp. 376, 385; Michael Everhart, H. Mis. Doc. 38, part 1, pp. 316, 329, 385; John McLain, H. Mis. Doc. 38, part 1, pp. 322, 325.

KNOX COUNTY.

James Johnson, H. Mis. Doc. 38, part 1, pp. 64, 65, 70; John Johnson, H. Mis. Doc. 38, part 1, pp. 64, 65, 70; Josiah Bowen, H. Mis. Doc. 38, part 1, pp. 101, 102, 115; Eli Young, H. Mis. Doc. 38, part 1, pp. 110, 114; John Bell, H. Mis. Doc. 38, part 1, p. 119; Moses Painter, H. Mis. Doc. 38, part 1, p. 119; John Nixon, H. Mis. Doc. 38, part 1, p. 113; Allen Long, H. Mis. Doc. 38, part 1, pp. 130, 144.

LICKING COUNTY.

One boatman, (name unknown,) H. Mis. Doc. 38, part 2, p. 21, part 1, p. 153; Cyrus McKinney, H. Mis. Doc. 38, part 1, pp. 162, 171; Thomas



Starret, H. Mis. Doc. 38, part 1, pp. 172-175; William Irwin, H. Mis. Doc. 28, part 1, p. 207; William Linton, H. Mis. Doc. 38, part 1, p. 209; James Streeter, H. Mis. Doc. 38, part 1, p. 209; John J. Creamer, H. Mis. Doc. 38, part 1, p. 209; Henry Holler, jr., H. Mis. Doc. 38, part 2, p. 59; John Weiss, H. Mis. Doc. 38, part 1, pp. 162, 171, 215; Otto Risher, H. Mis. Doc. part 1, pp. 191, 215.

#### MUSKINGUM COUNTY.

Robert Maginnis, H. Mis. Doc. 38, part 1, pp. 468, 521; Thaddeus Denman, H. Mis. Doc. 38, part 1, pp. 471, 521; Ferguson Morehead, H. Mis. Doc. 38, part 1, pp. 513, 533; Daniel Dugan, H. Mis. Doc. 38, part 1, pp. 479, 496, 538; N. C. Robinson, H. Mis. Doc. 38, part 1, pp. 468, 521, 540; David Woodward, H. Mis. Doc. 38, part 1, pp. 470, 477, 521.

All the other alleged illegal voters under this classification, upon the most careful examination of the evidence touching each, we find to have been legal voters and that their votes were properly received. Several of them voted in the cities of Newark and Zanesville, and are counted for the sitting member for the further reason that the contestant gave him no notice, as required by law, of illegal votes cast in said precincts.

#### DESERTERS.

The contestant claims that two hundred and one persons, guilty of the crime of desertion, voted for the sitting member. Before presenting our views of the law applicable to this class of voters, either generally or in detail, we will present such a classification of the voters themselves, as a very careful examination of the evidence concerning each seems to justify and require. We will place them under certain general heads, and annex such additional remarks to each as the facts render necessary.

*Persons under the draft of 1862, against whom there is no proof of actual desertion or leaving the district, or the United States.*

#### COSHOCTON COUNTY.

Evan Rogers, no proof where he voted, if at all; Frederick Spang, no proof where he voted, if at all; Christopher C. Fisher, did not vote; Peter Hillier, proof unsatisfactory that there was such a man; Jacob Cutshall, three of same name—the drafted man ran off and never voted; Francis Lumbricht, George Loar, not liable to draft—over forty-five years of age; Jno. P. Loar, a republican, and not drafted. John Loar was, and was killed in 1864; Yost Snyder; Perry Wheeler, not drafted; no proof for whom he voted, mere hearsay; John Dougherty, no proof that John Dougherty, of White Eyes Township, was even drafted, but John Dougherty of Pike Township, a different man, was; Thomas Sheets did not vote, but another Thomas Sheets did vote in Mill Creek Township, but no evidence for whom; John McDowell, no proof for whom he voted; Ransom L. Almack, Casper Rine, William Rine, a republican.

#### KNOX COUNTY.

Milton Pipes, not drafted, but another Milton Pipes was, and did not vote; Samuel Jones, no proof for whom he voted; Lewis Biggs, James Biggs, Benjamin Burnett, Jacob Elliott, Charles Elliott, Alvin Lybarger, Perez Lybarger, Hugh Lybarger, Robert P. Smith, Henry Wolford,



Samuel Hoge, Thomas Wallis, Jesse Underwood, jr., not drafted; Jesse Underwood was, but politics not proved; Daniel Smith, no evidence he left the county.

## LICKING COUNTY.

James Haskinson, Wesley Baring, James Shohoney, extremely uncertain whether he voted at all; Charles Carroll, Samuel J. Edwards, poll-book shows he did not vote—testimony vague; C. W. Collins, not drafted; Charles C. Collins was; Samuel Greenwood, no proof for whom he voted—not drafted, but Samuel Greenwood of Hartford Township was, and did not vote; Jesse Vail, no proof for whom he voted; William H. Belt, a republican.

*In the following cases under the draft of 1864 there is no proof of identity of the persons drafted and the persons voting, except either identity or similarity of name on lists.*

## COSHOCTON COUNTY.

George H. Strouse, not a deserter, did not vote; George H. Strouse, jr., did vote; George B. Smith did not vote; George Smith did; John Konyon, James Murphy, William Pool, Henry Haynes, Horace Norris, Robert Grimes, Samuel Croskey, James Bucklew, George Billman, Henry Cutshall, Noah Infield, Joseph Sneider, Martin Randalls, Samuel Bickle, George Caser, Edward Merrill, Joseph Knight, Jackson Mills, Noah A. Fry.

## KNOX COUNTY.

Benjamin Echenrode, John Phillips.

## LICKING COUNTY.

Calvin Neiberger, A. C. Denman, David Rector, John Moore, T. W. Larrabee, T. B. Nichols, Benjamin Foulk.

## MUSKINGUM COUNTY.

Frank Huff, John Lewis, John Jones, W. H. Crawford, Solomon Ross, W. H. Smith, Benjamin Shane.

We hold in reference to this class of voters that the poll-lists are not sufficient evidence that a person voted. Parol evidence of identity is necessary. Parol proof is admissible to corroborate and sustain the record, but not to set it aside or contradict it where by law the record is required to be kept and is made evidence, as in Ohio. (2 Contested Election Cases, p. 223.)

*In the following cases the identity of the drafted man and the voter is established, but generally by very vague and unsatisfactory testimony.*

## COSHOCTON COUNTY.

William Hyatt, John Holt, under draft of 1862; Chester T. Gomer, Nelson Maple, Stephen Looome, Anderson Maple, Francis Amore, John W. Curtiss, John Casner, Alexander Curtiss, Peter Fortune.

## KNOX COUNTY.

Samuel Wilson, Emanuel Wilson, Ephraim Wineland, George Scarborough, William M. Rinehart, Orange Johnson, Isaac Daniels, Calvin



B. Trout, Daniel Lepley, John W. Allarding, Peter Bluebaugh, Jacob Snyder, William Meyers, Minor McQueen, Bourbon Coe, George W. Mack, Lerzy Kreeks, Simon Lepley. The latter alone left county to avoid draft.

#### MUSKINGUM COUNTY.

J. W. Doughty, Matt. Dollings, James Knight, Lafayette Garley, Demetrius L. Krigbaum, George W. Powell, John W. White, Isaiah Stotts, John Snyder, Hugh Johnson, John M. Rath, John McNally, Jacob Henry, S. C. Cassidy.

*In the following cases, under the draft of 1864, the conclusive fact as to each is indicated after the name.*

#### GOSHOCTON COUNTY.

Peter Wingerson, no proof how he voted; Pat. Creely, no proof how he voted; J. Bradley Burt, put in substitute, part 2, pp. 335, 336; David Ford, put in substitute; Josiah Pepper, put in substitute; William Murray, neither drafted nor deserter; David E. Snyder, no proof for whom he voted; John Smith, poll-book shows he did not vote; John Wolf, no proof of desertion; Samuel Smith, no proof of desertion; Andrew Mavis, id not vote, part 1, page 385; James Addy, of Coshocton County, did not desert; George Smith, of Coshocton County, did not desert; Andrew Bickle, no proof of desertion; William Morton, did not vote; John Pritchard, not a deserter; Andrew J. Camp, not a deserter; Jacob Wolf, not a deserter; Ezekiel Severns, not a deserter; Mahlon Baker, no proof for whom he voted.

#### KNOX COUNTY.

Franklin Vian, of Pike Township, not deserter, of Monroe, is so charged; Benjamin F. Kunkle, put in substitute, part 2, p. 276; John Kessenger, or Kessinger, who was drafted, did not vote; David Hodge, put in substitute, part 2, p. 279; Salathiel Parrish, put in substitute, part 2, p. 279; James F. Scoles, put in substitute, part 2, p. 279; Philip Arnold, put in substitute, part 2, p. 279; Anson Lewis, not deserter; Cyrus Mitchell, not deserter, part 1, p. 115; part 2, pp. 310, 311; Thomas Fadely, not deserter, put in substitute; Samuel Cronkleton, put in substitute, part 2, pp. 276, 279; Tolbert Rockwell, not deserter, nor on list, part 2, pp. 311, 312; Aaron Donohy, did not vote for Morgan, part 2, p. 250; Hiram McManus, not deserter; John McKahan, not deserter, part 1, p. 110; Otho Countryman, not deserter, part 1, pp. 111, 250, 253; George Ely not deserter; Samuel Flack, not deserter; Samuel Jones, not deserter, part 1, p. 111; William Presley, or Priestly, not deserter, voted by no other name; Wilson Hartipee, no proof for whom he voted; John Miller, did not vote; John P. Miller, over sixty-two years of age, cripple twenty-three years, did vote, part 2, p. 99; Sylvester Hillary, no proof for whom he voted, or of his politics; Miller Davidson, voted for Delano, part 2, p. 102; Daniel Freese, no evidence about him; Charles Jewell, not charged with desertion on rolls of army; Linn Jewell, not charged with desertion on rolls of army; James H. Elliott, not charged with desertion by provost marshal; Richard S. Sigler, not charged with desertion by provost marshal; L. Cooley, not returned a deserter, but absent on furlough, and crippled in his hand; Riley Baker, not returned a deserter, part 1, pp. 205, 307, 308; John Cashdowler, not



returned a deserter, part 1, pp. 206, 308; Harvey Wise, not a deserter, nor in army; Andrew Wise, not a deserter, nor in army; William T. Davidson, not a deserter, nor in army; George Brown, no proof for whom he voted; Samuel Cooper, no proof for whom he voted; James Richardson, no proof for whom he voted; Augustus Dutton, no proof for whom he voted; Jacob Meyers, no proof for whom he voted; John Loafman, no proof for whom he voted; Ambrose Benjamin, no proof for whom he voted.

## MUSKINGUM COUNTY.

Anthony P. Burkey, he don't know for whom he voted, part 1, p. 600; Samuel J. Mattingley, poll-book shows he did not vote, part 2, p. 757; Isaac Linton, not a deserter, part 2, pp. 310, 311; Levi Bunting, not a deserter, part 2, pp. 251, 256; Hiram Walters, not a deserter, part 1, pp. 251, 256, 313, 314; Alfred Willis, did not vote, part 2, pp. 737, 738, 739; James Linton, did not vote, part 2, pp. 737, 738, 739; James Smith, not a deserter, part 1, p. 312—other proof worthless; Owen Gadd, did not vote, part 2, p. 754; Phillip Beck, not returned as deserter, part 1, pp. 251, 256; Johnson Shaw, not returned as deserter, part 1, pp. 251, 256; Duncan West, not returned as deserter, did not vote, part 1, pp. 251, 256; William Manley, no proof for whom he voted, part 1, p. 506; Richard M. George, no proof for whom he voted; W. P. Anderson, not a deserter; Wash. Suttles, not a deserter, part 1, pp. 251, 256, 312, 313; Thomas Cunningham, no proof for whom he voted.

Thus it appears that forty-one of these alleged deserters were drafted under the call for volunteers in 1862, and that thirty-seven, under the draft of 1864, are not identified with the alleged deserters, and that forty-three of them are so identified, and that seventy-nine of them are in no just or legal sense guilty of desertion or disqualified electors. It further appears that of the whole number, one hundred and two are legal voters, and ought not to be rejected, for reasons which are briefly indicated after their respective names in the foregoing list. Generally, a very laborious and minute examination of the evidence, such as it is, discloses the fact and makes inevitable the conclusion that to reject any considerable number of them upon such evidence would result in gross injustice. The degree of uncertainty which characterizes all the evidence of desertion, even in the strongest cases, leaves so much doubt as to the fact as to justify the holding of it all to be utterly insufficient to convict.

We hold in reference to all of the alleged deserters that they are *legal* electors, and that there is a signal failure, by legal evidence, to establish disqualification against any of them, because—

There is no proof of the trial and conviction of any of them for desertion by any court or tribunal of competent jurisdiction, civil or military, under the acts of Congress, March 3, 1863, or March 3, 1865, or any other laws. Without such conviction, even admitting the validity of those laws, their right to vote remains entirely unimpaired. It involves a violation of the most obvious rules of law, and principles of justice, and guarantees of liberty, and rights of the States, to deprive a citizen of so precious and sacred a franchise upon a vague charge, without due process of law, or a fair and impartial trial, with opportunity to the voter to make his defense. There is nothing in the acts of Congress that gives any countenance to the assumption that it is the intention of those acts to work any such results. The authors of them were not ignorant of the prohibitions and guarantees contained in the fifth and sixth articles of amendments to the federal Constitution and other pertinent provisions of that supreme law. It is not competent for Congress to inflict



punishment by the deprivation of rights upon the citizens of a State by mere legislative declarations. Neither can Congress, without usurpation, regulate suffrage in the States, by direct legislation to that end, or under the pretext of punishing men for alleged desertion. The regulation of suffrage belongs exclusively to the States, and this doctrine has been repeatedly affirmed by Congress in election cases and otherwise. It is also clearly established that Congress has no rightful authority to confer federal judicial power in such matters upon the judicial tribunals of a State, and still less upon the *quasi* judicial tribunals organized under the mere municipal regulations of a State, such as election boards, none of whose duties can scarcely be said to be judicial at all.

The language of the supreme court of Pennsylvania in the late case of *Huber vs. Riley*, a case which arose under the act of Congress of March 3, 1865, is so clear, just, and forcible that we quote from it the following paragraphs:

The spirit of these constitutional provisions is briefly that no person can be made to suffer for a criminal offense unless the penalty be inflicted by due process of law. What that is has been often defined, but never better than it was both historically and critically by Judge Curtis, of the Supreme Court of the United States, in *Dean vs. Murray*, (18 Howard, 272.) It ordinarily implies and includes a complainant, a defendant, and a judge, regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceeding. But I can call to mind no instance in which it has been held that the ascertainment of guilt of a public offense and the imposition of legal penalties can be in any other mode than by trial according to the law of the land, or due process of law—that is, the law of the particular case, administered by a judicial tribunal authorized to adjudicate upon it. *And I cannot persuade myself that a judge of elections, or a board of election officers, constituted under the State laws, is such a tribunal. I cannot think they have power to try criminal offenders, still less to adjudge the guilt or innocence of an alleged violator of the laws of the United States. A trial before such officers is not due process of law for the punishment of offenses, according to the meaning of the phrase in the Constitution.* There are, it is true, many things which they may determine, such as the age and residence of a person offering to vote, whether he has paid taxes, and whether, if born an alien, he has a certificate of naturalization. These things pertain to the ascertainment of a political right; *but whether he has been guilty of a criminal offense, and has as a consequence forfeited his right, is an inquiry of a different character.* Neither our Constitution nor our law has conferred upon the judges of elections any such judicial functions. They are not sworn to try issues in criminal cases. They have no power to compel the attendance of witnesses, and their judgment, if rendered, would be binding upon no other tribunal. Even if they were to assume jurisdiction of the offense described in the act of Congress, and proceed to try whether the applicant for a vote had been duly enrolled and drafted, whether he had received notice of the draft, whether he had deserted and failed to return to service, or failed to report to a provost marshal, and whether he had justifying reasons for such failure, and if after such trial they were to decide that he had not forfeited his citizenship, all this would not amount to an acquittal. It would not protect him against a subsequent similar accusation and trial, would not protect him against trial and punishment by a court-martial. Surely that is no trial by due process of law, the judgment in which is not final, decides nothing, but leaves the accused exposed to another trial in a different tribunal, and to the imposition by that other tribunal of the full punishment prescribed by law. *It is not in the power of Congress to confer upon such a tribunal, which is exclusively of State creation, jurisdiction to try offenses against the United States.* The doctrine seems a plain one that Congress cannot vest any of the judicial power of the United States in the courts of any other government or sovereignty. (*Martin vs. Hunter's lessee*, 1 Wheat., 304, 330; *Ely vs. Peck*, 7 Conn., 242, and *Scoville vs. Canfield*, 14 Johns., 338.) And clearly, if this is so, Congress cannot make a board of State election officers competent to try whether a person has been guilty of an offense against the United States, and if they find him guilty, to enforce a part of the prescribed penalty.

The same court, after an examination of all the laws of Congress on the subject of desertion and its punishment, gives the following just construction to the act of 1865:

All these acts of Congress manifestly contemplate trial for desertion in *courts-martial*, and the infliction of no punishment or forfeiture except upon conviction and sentence in such courts. The act of 1806 provided for general courts-martial, and made minute and careful regulations for their organization, for the conduct of their proceedings, and



for the approval or disapproval of their sentences. Subsequent acts made some changes, but they have not restrained the jurisdiction or diminished the powers of such courts. It is to such a code of laws, forming a system devised for the punishment of desertion, that the 21st section of the act of March 3, 1865, was added. *It refers plainly to pre-existing laws. It has the single object of increasing the penalties, but it does not undertake to change or dispense with the machinery provided for punishing the crime.* The common rules of construction demand that it be read as if it had been incorporated into the former acts. And if it had not been, if the act of 1806 and its supplements had prescribed that the penalty for desertion, or failure to report within a designated time after notice of draft, (which the act of 1863 declares desertion,) should be punished on conviction of the same with forfeiture of citizenship and death, or in lieu of the latter, such other punishment as, by the sentence of a court-martial, may be inflicted, would any one contend that any portion of this punishment could be inflicted without conviction and sentence? Assuredly not; and if not, so must the act of 1865 be construed now. *It means that the forfeiture which it prescribes, like all other penalties for desertion, must be adjudged to the convicted person, after trial by court-martial and sentence approved.* For the conviction and sentence of such a court there can be no substitute. They alone establish the guilt of the accused and fasten upon him the legal consequences. Such, we think, is the true meaning of the act—a construction that cannot be denied to it without losing sight of all the previous legislation respecting the same subject-matter, no part of which does this act profess to alter.

It may be added that this construction is not only required by the universally admitted rules of statutory interpretation, but it is in harmony with the personal rights secured by the Constitution, and which Congress must be presumed to have kept in view. It gives to the accused a trial before sworn judges, a right to challenge, an opportunity of defense, the privilege of hearing the witnesses against him, and of calling witnesses in his behalf. It preserves to him the common law presumption of innocence until he has been adjudged guilty according to the forms of law. It gives finality to a single trial. If tried by a court-martial and acquitted his innocence can never again be called in question, and he can be made to suffer no part of the penalties presented for guilt. On the other hand, if a record of conviction by a lawful court be not a prerequisite to suffering the penalty of the law, the act of Congress may work intolerable hardships.

The reasoning and conclusions of the distinguished judge (Justice Strong) who delivered the foregoing opinion are so vigorous, clear and unanswerable, that we adopt them fully in this case. These views have been concurred in by other high courts in the country. The very language of the act seems to forbid any other construction. The *penalty* under the twenty-first section is declared to be “*in addition to the other lawful penalties of the crime of desertion.*” What other or pre-existing penalties are meant? Certainly those only which, under the rules and articles of war and previous laws, might be adjudged against offenders by competent and proper courts.

But it is claimed that, because under the constitution of Ohio no man can be a legal elector who, in addition to the other qualifications, is not also a citizen of the United States, therefore, Congress having control over citizenship of the United States, may decitizenize or withdraw citizenship of the United States from whom it pleases by mere legislative declarations, without due process of law, and that all persons thus deprived of citizenship of the United States at once cease to be citizens, or legal electors of the State of Ohio. This doctrine is deemed most dangerous, if not monstrous, and violative of most valuable and fundamental principles in our government. That provision in the constitution of Ohio was undoubtedly designed to prevent aliens from becoming electors in Ohio until they had first become by naturalization citizens of the United States. This was required on grounds of local State policy. But it is a perversion of terms to say that any person acquires the right of suffrage in Ohio by virtue of the laws of Congress. Naturalization does not confer the right of suffrage. That right is only conferred by the constitution and laws of Ohio. Persons are allowed to vote there because they possess all the qualifications thus prescribed. The right of suffrage at a State election is a State right, a franchise conferable only by the State, which Congress can neither give nor take away. If,



therefore, the act now under consideration is in truth an attempt to regulate the right of suffrage in the State, or to prescribe the conditions on which that right may be exercised, it would be held unwarranted by the federal Constitution. In the exercise of its admitted powers, Congress may doubtless deprive an individual of the opportunity to enjoy a right that belongs to him as a citizen of a State, even the right of suffrage. But this is a different thing from taking away or impairing the right itself. Congress may also impose upon the criminal forfeiture of his citizenship of the United States—that is, of what Justice Story denominates his *general* citizenship; but that does not legally or necessarily deprive him of his citizenship of the State, which is secured to him by the State constitution and laws, and is to be held on the terms prescribed by them alone. It is an integral part of the State government.

But we claim that the act of March, 1865, is unconstitutional in so far as it may be designed, by its terms, to work the disfranchisement of any of the persons alleged to be deserters in this case, because, to that extent at least, it is an *ex post facto* law, and a bill of pains and penalties. In support of these objections, waiving further argument here, we refer to the luminous and conclusive judgments of the Supreme Court of the United States in the cases of *Cummings vs. The State of Missouri*, and *ex parte Garland*, 4 Wallace Reports, pp. 277, 333, which ought to be familiar to every member of the House.

But it is attempted to evade the effect of these decisions by assuming that the failure to report, in some of these cases, after the President's proclamation, converted the previous desertion into a sort of *continuing* crime, for which *continuance* the elector may be disfranchised. It is not, and will not be, denied that the offense of desertion had been committed *before* the proclamation, if committed at all. It was therefore complete, and punishable in the manner prescribed under the previous laws. But the effect of the act of March 3, 1865, is to enlarge, extend the offense, to *increase it* by declaring it a *continuing* crime, which it was not before, which is the very definition of an *ex post facto* law:

An *ex post facto* law is one which imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed; or changes the rules of evidence by which less or different testimony is sufficient to convict than was then required.

The great justice of our conclusions concerning the true interpretation of these laws of Congress cannot be better illustrated than by a reference to the remarkable character of the evidence upon which it is attempted to disfranchise these electors. There is not legal proof of *actual* desertion in a dozen cases in the entire list. There is no record of a previous trial and conviction in a single case. There is hearsay and rumor of the most unsatisfactory, shadowy, and inadmissible character in considerable abundance, but most of it would be rejected in any case on trial before any intelligent court in the country. Adjutant General Cowan states that General Fry's report gives twenty-seven thousand as the number of deserters among Ohio soldiers during the war; but he estimates that the number of deserters in his report could be reduced, by "returns to duty," two-thirds, by reason of existing orders having compelled officers to report every man absent at roll-call on muster day as a deserter. The same report shows that the number returned as deserters for the thirteenth district was five hundred and forty-three. The proof relied upon, in nearly every case, to establish desertion is a copy of the muster-roll containing the name of the soldier or drafted man marked deserter, or a certificate of the adjutant general of Ohio that the records in his office show such facts. But we cannot find that any law of Congress



makes such rolls or certificates legal evidence for the purposes for which they are here used. All this evidence as to the voter is *ex parte*, having been taken in this case *after* the election, and where the election boards, after examination of the voter and hearing the case according to the laws of Ohio, had adjudged him a legal elector and received his ballot. He is thus, in legal effect, to be deprived of a precious franchise, branded as a criminal, and punished, in violation of the most obvious principles of justice, and without a hearing.

#### ABUSE OF FEDERAL PATRONAGE.

We do not consider it necessary to give any attention in this report to the alleged improper and illegal use of federal patronage, because, after a careful examination of the evidence, we fail to discover any facts that can justly invalidate a single vote, or exert any material effect upon the just determination of this case.

#### CONTESTEE'S CASE.

Before we proceed to state our conclusions touching the case claimed to have been made by the contestee, and the better to indicate the grounds of law upon which we arrive at them, we incorporate the following provisions of the election laws of Ohio, copied from 1 Swan & Critchfield, p. 543:

#### AN ACT to preserve the purity of elections.

First. No person shall be permitted to vote at any election unless he shall have been an actual resident of the State for one year next preceding the election, and an actual resident of the county for thirty days next preceding the election, and an actual resident of the township or ward twenty days next preceding the election; and the judges of the election, in determining the residence of a person offering to vote, shall be governed by the following rules, as far as the same may be applicable: That place shall be considered and held to be the residence of a person in which his habitation is fixed, *without any present intention of removing therefrom*, and to which, whenever he is absent, he has the intention of returning.

Second. A person shall not be considered or held to have lost his residence who shall leave his home, or go into another State, or county of this State, *for temporary purposes* merely, without an intention of returning.

Third. A person shall not be considered or held to have gained a residence in any county in this State into which he shall come for *temporary purposes*, without the intention of making such county his home, *but with the intention of leaving the same when he shall have gotten through with the business that brought him into it.*

Fourth. If a person remove to another State with an intention to make it his permanent residence, he shall be considered and held to have lost his residence in this State.

Fifth. If a person remove to another State, *with an intention of remaining there for an indefinite time, and as a place of present residence*, he shall be considered and held to have lost his residence in this State, notwithstanding he may entertain the intention of returning at some future period.

Sixth. The place where a married man's family resides shall, *generally*, be considered and held to be his residence; but if it is a place for the temporary establishment of his family, or for transient objects, it shall be otherwise.

Seventh. If a married man has his family in one place, and he does his business in another, the former shall be considered and held to be his place of residence.

Eighth. The mere intention to acquire a new residence *without the fact of removal*, shall avail nothing; neither shall the fact of removal without the intention.

Ninth. If a person shall go into another State, and while there exercise the right of a citizen by voting, he shall be considered and held to have lost his residence in this State.

SEC. 34. That no election shall be set aside for want of form in the poll-book, provided they contain the substance. (Swan and Critchfield, p. 539.)

SEC. 24. If any judge of the election shall knowingly receive or sanction the reception of a vote for any person not having all the qualifications of an elector prescribed



by this act, or shall receive or sanction the reception of a ballot from any person who shall refuse to answer any question which shall be put to him in accordance with the provisions of the 13th section of this act; or who shall refuse to take the oath prescribed by the 15th section of this act; or shall refuse, or sanction the refusal by any other judge of the board to which he shall belong, to administer either of the oaths or affirmations prescribed by the 13th and 15th sections of this act, \* \* \* on conviction thereof shall be imprisoned in the penitentiary, and kept at hard labor, not more than five years or less than one year. (Swan and Critchfield, p. 547.)

#### MINORS.

Of the alleged minors who voted for contestant we find the proof sustains the allegations as to the following persons, and that they should be deducted from the number of votes cast for him:

L. A. Proctor, admitted by contestant, see his brief, p. 12; Job N. Evans, admitted by contestant, see his brief, p. 12; Adolph McGrady, admitted by contestant, see his brief, p. 12; E. Kingston, admitted by contestant, see his brief, p. 12; Rufus Rowley, admitted by contestant, see his brief, p. 12; M. Cummings, admitted by contestant, see his brief, p. 12; Morrison M. Burns, admitted by contestant, see his brief, p. 12; Samuel March, admitted by contestant, see his brief, p. 12; Charles Hulien, part 2, pp. 136, 193, 887. The proof as to Elias Parshall and Samuel Wise is insufficient.

#### IDIOTS AND INSANE.

Of these classes we find the proof strong and conclusive against the capacity of the following persons who voted for the contestant, and that their votes ought to be deducted from him:

Silas Dibble, admitted by contestant, see his brief, p. 12; Benjamin Rutter, admitted by contestant, see his brief, p. 12; William Dickerson, part 2, pp. 42, 108; Nathaniel Martin, part 2, pp. 42, 113; Calvin Hill, part 2, pp. 183, 198, 265. John Andrews; his father swears he was a confirmed idiot, part 2, p. 208. Henry Eggleston has a guardian because insane, part 2, pp. 191, 266; Peter Stoneburner, part 2, p. 540. The proof as to Riley Garlinghouse, Jesse Whitehead, Henry Baker, and Hamilton Hopper is insufficient.

#### NON-RESIDENTS.

Of this class we find the proof very clearly establishes that the following persons were not legal electors, and voted for the contestant, and ought to be deducted from his votes:

Daniel W. Prouty, part 2, pp. 518, 520; Isaac Stockdale, part 2, p. 523; Martin Messick, admitted by contestant, see his brief, p. 12; Benjamin Briggs, admitted by contestant, see his brief, p. 12; John Davis, admitted by contestant, see his brief, p. 12; William Secord, admitted by contestant, see his brief, p. 12; Samuel Secord, admitted by contestant, see his brief, p. 12; R. Gleason, admitted by contestant, see his brief, p. 12; D. Pearson, admitted by contestant, see his brief, p. 12; Hugh Roy, part 2, pp. 533, 534, 535, 671; John A. Norman, part 2, pp. 622, 623; Henry S. Rhodes, part 2, p. 666; Charles Winson, part 2, p. 270; Henry Ackley, part 2, pp. 15, 38, 39; A. S. Foster, part 2, pp. 17, 18, 19; Esau Rice, part 2, p. 25; Spenser Clouse, part 2, pp. 28, 29, 30; S. L. Southard, part 2, p. 34; A. E. Hamilton, part 2, p. 43, 1 S. and C's Stat., O., pp. 543, sec. 2; B. P. Humphrey, part 2, p. 60; Samuel G. Lusk, part 2, p. 62; John R. Wood, part 2, p. 66; George McMassters, part 2, p. 69; Emmanuel Sites, part 2, p. 73; Andrew Fry, part 2,



pp. 12, 88; Wesley Bell, part 2, pp. 89, 97; Daniel Baker, part 2, p. 112; William Sarratt, part 2, p. 74; David Bliss, part 2, p. 131; Hiram French, part 2, p. 144; John Lewis, part 2, pp. 151, 161; Emer E. En-tricken, part 2, p. 153; Rinaldo Craig, part 2, pp. 158, 160, 193, 214; J. Atkins, part 2, pp. 180, 200, 214; W. W. Malay, part 2, pp. 207, 208; John C. Jacobs, part 2, p. 210; William Tribbett, part 2, p. 247; Charles Purcell, part 2, pp. 256, 262, part 1, p. 98; John Means, part 2, p. 280; Stephen Carmichael, part 2, p. 280; Cassius Hollister, part 2, p. 280; Ebenezer Hays, part 2, pp. 320, 323, 409; Thomas Reese, part 2, pp. 360, 365, 367, part 1, p. 368; W. S. Cotting, part 2, pp. 414, 415, 416, 417; W. House, part 2, p. 446, part 1, p. 395.

#### NON-RESIDENT STUDENTS.

John H. Grey, part 2, pp. 4, 8, 84; A. L. Lockert, part 2, pp. 5, 9, 83; M. N. Reed, part 2, pp. 5, 9, 84; E. J. Pearce, part 2, pp. 6, 9, 85; H. A. Rogers, part 2, pp. 9, 10, 11; James K. Mendenhall, part 2, p. 172; D. K. Wade, part 2, p. 176; Charles T. Stout, part 2, p. 188; George N. Meade, part 2, p. 189; Henry J. Camp, part 2, p. 190.

The proof as to Jefferson Carnes, Charles Dockarty, Eli Stainbrook, William Burns, John Arndt, John Wharton, William Beardsley, V. W. Graves, James N. McGiffin, Gustavus Bascom, W. C. Manson, Shannon Hadley, John Allman, O. P. Meeks, W. L. Langford, G. M. Peters, Arthur Lawrence, Robert C. Booth, A. B. Nicholas, Elijah Leedy, Thomas Newell, George Van Horn, R. J. Adler, Jackson Williams, John Gregson, F. M. Oglevie, Samuel P. Sherman, E. A. Rooth, and John Davies is insufficient.

It has been our aim, in passing upon the foregoing cases, to be governed by the law of Ohio, (the material parts of which are not quoted,) and the established principles of law applicable to such cases, and the facts developed in the cases respectively.

It is said that the right of the students to vote is *res adjudicata*. But we are not advised that their right to vote in this case has ever been adjudicated. The case of *Farlee vs. Runk* (vol. 2 Cont. Elec. Cases, p. 87) does not settle the question. In that case the Committee of Elections held that the students who voted in that case in New Jersey *under the constitution and laws of New Jersey*, and upon the facts proven, were legal electors. But it does not appear that the House sustained the advice of the committee. In the case under consideration, the legislature of Ohio enacted a law in 1857, which has been in force ever since, the validity of which has been recognized by all departments of the State government, and has never been judicially questioned or denied in that State, and that law provides for the guidance of election officers that—

A person shall not be considered or held to have gained a residence in any county in this State into which he shall come *for temporary purposes*, without the intention of making such county his home, *but with the intention of leaving the same when he shall have gotten through with his business that brought him into it.*

The evidence in reference to these students brings them respectively within the clear operation of this law.

#### BLUE ROCK TOWNSHIP.

It is claimed by the sitting member that, by reason of alleged gross frauds, irregularities and menacing disturbances at the election in Blue Rock Township, Muskingum County, the entire poll should be rejected. The material facts in reference to this precinct are as follows:

The officers of the election were all the political friends of the con-



testant. 120 persons voted there in 1866 who did not vote there in 1865. In 1865, at the governor's election, 129 votes were cast for Cox, the republican candidate, and 79 votes for Morgan, the democratic candidate, making the majority for Cox 50. At the congressional election in 1866, 206 votes are returned for the contestant, and 89 for the sitting member. The majority for Mr. Delano is 117, and his increase over the vote for Cox, in 1865, is 67, and the increase in the township since 1865 is 87, and the increase in the vote for Mr. Morgan is 10. In 1867, 711 more votes were cast than ever before in the 13th district, yet in that year the whole vote in this precinct was 258, being 37 less than in 1866, and Hays, the republican candidate for governor, received, in 1867, 155 votes, being 51 votes less than Mr. Delano had in 1866, and Thurman, the democratic candidate, received 103, being 14 more than Mr. Morgan had in 1866.

The polls were closed for one hour by the election officers at dinner time. The law of Ohio requires them to be opened "between the hours of 6 and 10 o'clock in the morning," and continued open until 6 o'clock in the afternoon. The district court of Hamilton County, Ohio, by Justice Brinkerhoff, a distinguished member of the supreme court of Ohio, has decided, since the election in controversy, that—

Under the Ohio statute, passed March 3, 1852, "to regulate the election of State and county officers," (3 Curwen's Rev. Stat., sec. 1920,) after the polls of an election have been once opened between the hours of 6 and 10 in the morning in pursuance thereto, they cannot be closed for any purpose, until 6 o'clock in the afternoon *without rendering the election illegal and void.* (State vs. Ritt et al., Am. L. Reg. for December, 1867, p. 88.)

Yet in that case the court says:

There is no pretense that the ballot-box was tampered with, but that the judges rather acted in ignorance of what their duties were.

In the summer of 1865, there sprang up, in this township, a great deal of excitement about the alleged existence of petroleum there, and large numbers of transient persons, as laborers, speculators, and mechanics, and others, came into the township, without intending to become citizens of it, and many of them are alleged to have illegally voted.

There were great irregularities, frauds and disturbances attending the conduct of the election, which can be best indicated by the repetition here of the material parts of the testimony on these points.

Thomas L. Elwell testifies (part 2, p. 579) that—

The companies were principally formed in the fall of 1865 and spring of 1866. They came from different portions of Ohio, Massachusetts, New York, Virginia, and Pennsylvania. They may have been from other States, but I recollect of hearing of men from these States. Men from these different places performed the labor. These were principally from Virginia. I knew one man from New Jersey by the name of Cox.

Question. With what political party did the non-resident oil men act in Blue Rock Township at the October election, 1866?—Answer. Principally with the republican party, with one or two exceptions.

Q. State what you know relative to there having been an exodus of oil men from Blue Rock Township immediately after the last October election.—A. The exodus was general; the oil men generally left immediately after the election.

James White testifies, (part 2, p. 608:)

Question. How long have you resided in Blue Rock Township, Muskingum County?—Answer. A little over fifty years.

Q. State with what political party the non-resident oil men in Blue Rock Township acted at the last October election.—A. Well, sir, as far as I know, they voted the republican ticket; I understood there was one voted the democratic ticket; his name was Stifely.



Q. Please state what was the conduct and bearing of the active republican friends of Mr. Delano toward members of the democratic party while at the polls.

(Objected to.)

A. I thought they were a little rougher than ever I had seen there.

Q. Describe what that conduct was.—A. Well, I have been a voter there all my life, and never saw as much abuse to old citizens; they called them rebels and everything they could lay their tongues to.

Q. State whether or not you and other democrats were intimidated from asserting your right as challengers by the conduct of the friends of Mr. Delano.—A. There were three old members went into the house and thought we would challenge some of their votes; they commenced abusing us till I backed out, and went out of the house and staid out.

Q. State whether or not democrats were generally induced to leave the polls in consequence of the abuse and threats of the friends of Mr. Delano.—A. They did run two democrats off; the democrats came, and would go right off again.

Cross-examined by W. R. SAPP, attorney for contestant:

Q. What political party do you belong to, and for whom did you vote for Congress at the last October election?—A. I belong to the democratic party, and voted for Mr. Morgan.

Q. Will you please name any democrats who left the place where the election was held by reason of abuse, &c.?—A. Yes, sir; I can tell you two, Mr. Farrel and Mr. Silvey.

Q. What was said to them, and by whom?—A. After they had got on their horses ready to go, there was a great band of them with Tom McClees, hooping and hallooing and urging them on; I couldn't tell you the words they said, for they were all cursing.

Q. Now you say this was when those gentlemen got on their horses to leave for home; that could not be the cause of their leaving, could it?—A. The cause of their leaving was they were abusing them; Mr. Silvey said something and Slater slapped his hand over his mouth, and then they swarmed around him.

Joseph McDonald testifies, (part 2, p. 624:)

Question. How long have you resided in Blue Rock Township, Muskingum County, Ohio?—Answer. Since 1816.

Q. Were you at the election held for State and county officers and member of Congress in said township in October, 1866?—A. Yes, sir.

Q. Please state what you know relative to the judges of said election refusing to swear non-resident oil men when they were challenged? As nearly as you can, please state what was said.—A. They said they fetched them in as stragglers or Methodist preachers, who had a right to vote wherever they were; there were some few sworn; the balance were not sworn; the judges said it was not worth while.

Q. Please state who requested the judges of said election to have the non-resident oil men sworn.—A. I did myself, and also heard other persons do so, but do not recollect who. They said they had not time to swear all of them, and they passed the oil men into the class of stragglers and Methodist preachers.

Q. Please state to what political party the judges of said election belonged and whether all the trustees of said township officiated as judges at said election.—A. They were republicans; there were only two of them officiated; John Patton was appointed in Mr. Sterrett's place; Mr. Sterrett was there and voted, but was sick and went home; Mr. Patton was also a republican.

Q. Please state what was the conduct and bearing of the active friends of Mr. Delano at that election to members of the democratic party?—A. They were more like a mob than anything else.

Q. State what you know relative to democrats having been driven from the polls by threats and intimidations.—A. One gentleman there, I have forgotten his name, he was a democrat, they brought him up and examined him; he answered all the questions that were put to him, and the mob called him a secessionist. They did not let him vote; put him off until the afternoon; he was willing to swear that he had been two years in the county, two years in the State, and six months in the township.

Q. To what political party did the non-resident oil men, who voted in Blue Rock Township at the last October election, belong?—A. They belonged to the republican party generally; there were few democrats.

John Silvey testifies, (part 2, p. 633:)

Question. How long have you resided in Blue Rock Township, Muskingum County, Ohio?—Answer. Ever since I was born, about forty-three years.

Q. Please state whether you were present at the election held in Blue Rock Township for State and county officers and members of Congress in October, 1866.—A. I was.

Q. State what you know relative to the judges of said election refusing to swear non-resident oil men when challenged.—A. Mr. McDonald and I went into the polls and requested them to swear these oil men; the reply was that it was not necessary;



that Mr. Peyton's reference was enough; that they are the same as a Methodist preacher on a circuit; wherever they were at the time was their residence; nothing further said in my presence.

Q. Please state whether or not democrats were intimidated from challenging by the conduct of the active friends of Mr. Delano at that election.—A. Well, I suppose they were.

Q. State what was the conduct toward democrats by the active friends of Mr. Delano at that election.—A. Why, if the democrats were to speak, fifteen or twenty would run up and shake their fists at you and menace you, and threatening to beat you or whip you.

Q. For how long was that election suspended by the judges at noon?—A. I could not tell you; I wasn't there just at noon.

Q. Please state whether the democrats or many of them remained at the polls during the election or went home; and if they did not remain, what was the reason?—A. Well, there didn't appear to be many of them remain at the polls. I think there was a reason of too much rabble and too much fuss.

Q. With what political party did the non-resident oil men in Blue Rock Township act at the last October election?—A. As a general thing with the republican party.

Q. Now, can you give the facts which make them non-residents according to law; we want facts, and not your opinion?—A. The fact is this: they were there a few days before the election; they were there at the election, but they were not there a few days after the election, and they are not there now—that is, a majority of them.

Further reference is made to the depositions of Robert Mawhorter, (part 2, p. 586,) Robert Silvey, (part 2, p. 613,) William B. Hunter, (part 2, p. 589,) Joseph Harper, and Alexander Buchanan, (part 2, p. 629, and part 2, p. 658.)

In conclusion, in our judgment, all the proof touching this precinct discloses such a condition of disorder and violence, and so many gross irregularities, frauds, and unlawful acts, on the part of the election officers and the friends of the contestant, that it is impossible to deduce the truth from the returns. It is impossible, upon an impartial examination of all the evidence, not to conclude that there were committed numerous, palpable, and corrupt violations of the law, in rejecting legal and receiving illegal votes, in refusing to regard challenges, in permitting confessedly transient, itinerant persons to vote because they were like Methodist preachers, and in other acts detailed in the testimony. These conclusions are further greatly strengthened by the facts concerning the remarkable changes in the votes in this township between the years 1865, 1866, and 1867. We refer, in this connection, as authority, to *Blair vs. Barrett*, 2 Cont. Elec. Cas., p. 308; *Knox vs. Blair*, *id.*, p. 521, and cases there cited; *Howard vs. Cooper*, *id.*, p. 275; *Kneas's case*, *Parson's Select Cas.*, p. 553, and *Washburn vs. Voorhees*, in the 39th Congress.

In view of the whole case, *upon all the facts and the law applicable thereto* we feel compelled to reject the entire poll of this township.

#### CLINTON TOWNSHIP, KNOX COUNTY.

It is claimed by the sitting member that the poll of this township should be rejected. The facts and the law in reference to the election in this township are as follows:

Within the corporate limits of this township is situated the incorporated city of Mount Vernon, divided into five wards. The constitution of Ohio requires electors to vote in the county, township, and ward in which they reside. The laws of the State require:

That each township in the several counties shall compose an election district, unless such township is now, or shall hereafter be, divided by law into more districts than one; the election to be held at such place in such township or district as the trustees in each township shall direct; and each ward of any city that is or may be divided into wards shall compose an election district; the elections therein to be held at such places as the members of the city council for their respective wards shall direct; and



in all elections holden under this act they shall serve as judges, and perform the duties required of township trustees in like cases. (Act of May 3, 1852; 50 Ohio Laws, 311; Swan and Critch. Stat., p. 532, sec. 15, 16.)

That if either of the trustees, common councilman, or clerk of any township, shall fail to attend at the time and place of holding elections, or if either of them should be a candidate for a State or county office, then it shall be the duty of the electors present to choose,  *viva voce*, suitable persons, (as the case may require,) having the qualification of electors, to act as judges or clerk (as the case may be) of the election. (Act of April 2, 1859; 56 Ohio Laws, 119; 1 Swan and Critch., p. 533, sec. 20.)

No person shall be permitted to vote at any election unless he shall have been an actual resident of the State for one year next preceding the election, and an actual resident of the county for thirty days next preceding the election, and an actual resident of the township or ward twenty days next preceding the election. (Act of May 1, 1857; 54 Ohio Laws, 136; 1 Swan and Critch. Stat., p. 743, sec. 71.)

Any person who shall wilfully vote in any township or ward in which he has not actually resided for twenty days next preceding the election, shall, on conviction thereof, be imprisoned in the jail of the proper county not more than six months, nor less than one month. (Act of May 1, 1857; 1 Swan and Critch., p. 544, sec. 73.)

Nothing in this act contained, so far as the same relates to the length of time required of the voter to reside in the township or ward where he offers to vote, shall be held, taken, or construed to apply to any voter who is the head of a family, who shall *bona fide* remove with his family from one ward into another within the corporate limits of any city within this State, or who shall remove from one township to another within the same county. (Act of May 1, 1857; Swan and Critch., p. 544, sec. 85)

That all elections hereafter to be holden for \* \* \* representatives to Congress shall be held and conducted in the manner prescribed by this act.

In the city of Mount Vernon no election was held according to law. No attempt was made to hold any election according to law in said city as such or in the respective wards thereof. An election was held within the territorial limits of the 4th ward, but it was held as a township not as a ward election, and was held by the trustees of Clinton Township, neither of whom was a councilman or officer of the city. At this election the electors of the township, including the city, voted. The votes of the citizens of the city and those of the citizens of the township outside the city were all deposited in the same ballot-box. The polls were closed by the officers of this election from 30 to 60 minutes between 12 m. and 1 o'clock p. m., and the ballot-box and poll-books were carried away and kept by the officers, all of whom were the political friends of the contestant. (See the decision of Justice Brinkerhoff, referred to in connection with Blue Rock Township.) The workmen in the foundries and workshops of the city generally voted during their dinner hour, from 12 to 1 o'clock, and were liable to lose wages if absent to vote at another hour. (Part 2, pp. 286, 287, 211, and part 1, pp. 132, 133.) The general elections for Clinton Township appear to have been holden as this election was during the preceding 13 or 14 years, for some unexplained reason ignoring the existence of the city and disregarding the plain letter of the law. One of the officers of the election, John Y. Reeve, refused to administer the oath to many persons challenged by the friends of the contestee, and unlawfully and fraudulently deposited their ballots in utter disregard of the demands of competent challengers, and thus committed felonies punishable by imprisonment in the penitentiary of the State. The law says that:

If any judge \* \* \* shall refuse or sanction the refusal by any other judge of the board to which he shall belong to administer either of the oaths or affirmations prescribed by the 13th and 15th sections of this act, \* \* \* (to be administered to any person whose right to vote is challenged,) he shall be imprisoned in the penitentiary and kept at hard labor not more than five years nor less than one year.

Can this election be sustained? Although we deem it wholly immaterial to effect the result of this contest whether the House exclude or admit the poll of this township, yet it becomes our imperative duty to present the facts, the law, and our views to the House. The law, in the



conduct of this election, has not only been openly disregarded, but it has been also directly violated. No elections were held in the wards of the city. Their ballots were confused with those of the citizens of the township outside. It is no answer to say that the proper officers neglected to organize election boards in the city, and that the people therefore might vote at the township poll, because, in such case, it was the right and duty of the citizens at the time to select other officers, and proceed to hold the election according to law. The citizens of the city had no right to vote at all out of their respective wards, and to do so was to commit crime under the laws of Ohio. If all these things can be done without vitiating elections, then election laws become useless and inoperative. Upon the evidence in this case it is impossible to purge this poll of votes unlawfully cast, or to determine what electors of *Clinton Township* voted at all, or for whom they voted. In *Miller vs. Thompson*, 2 Contested Election Cases, p. 118, it is held that "if the constitution and laws of a State require that electors shall vote only in the counties in which they reside, and at designated places in those counties, votes given at other than the designated places must be treated as nullities."

We do not feel at liberty for a moment to hesitate in the conclusion, upon all the grounds of fact and law, that it is our clear duty to reject this poll entirely. The vote returned for the contestant was 736, and for the contestee 355.

#### OTHER TOWNSHIPS.

In reference to the elections in Madison, Muskingum, Licking, Union, Monroe, and Harrison Townships, in Muskingum County, and Harrison and St. Albans Townships, in Licking County, and Washington and Keene Townships, in Coshocton County, and the first ward of the city of Zanesville, in Muskingum County, although the evidence discloses in the conduct of them severally many irregularities and violations of the letter and spirit of the law, yet, inasmuch as the evidence fails to show any material injury to either party, or corrupt and fraudulent conduct on the part of the officers, we do not think that their rejection is demanded. The chief violations of the letter of the law consist in closing the polls for short periods during the dinner hour, and in the too frequent absence of one or another of the officers from his place at the polls while open. The fact of such unlawful closing of the polls, or of such occasional absence of an officer of the election, without proof of bad faith, fraud, corruption, or actual injury, we deem insufficient to call for the rejection of the polls in question.

#### DOUBLE VOTES.

The proof shows that in Jefferson Township, Knox County, a double ticket was put into the ballot-box, with the name of the contestant on each, and both were illegally counted for him, although the law expressly required both to be rejected; and, in the counting out, one ballot for the contestee was unlawfully thrown out by the officers of the election. (Part 2, pp. 186, 239.) The evidence as to these facts is very clear. Two votes, therefore, ought to be deducted from the contestant in this precinct and one added to the number for the contestee.

#### VOTES ILLEGALLY REJECTED.

In Hartford Township, Licking County, the vote of Samuel Sloan for the contestee was unlawfully rejected by the election officers, and ought



now to be added to his vote. (Part 2, p. 34.) The right of Sloan to vote was perfectly clear. Isaac Boyd and James H. Miles are admitted by contestant to have been illegally refused the right to vote for contestee. (See contestant's brief, page 12.)

#### VOTER CONVICTED OF COUNTERFEITING.

In Milford Township, Knox County, Edward Beach voted for the contestant, but had been previously convicted by the United States district court for the northern district of Ohio of passing counterfeit coin and was unpardoned, which offense is a felony alike under the laws of Ohio and of the United States, and punishable in like manner under each, without disfranchisement under the federal law. But if the conviction had been under the laws of Ohio, a part of the penalty would have been disfranchisement. The sitting member claims, therefore, that as the voter was a citizen of that State, and the offense was committed therein, the disfranchisement under the State laws attaches and takes effect upon the conviction in the federal court. We think otherwise. The penalties denounced against any crime by the respective governments can only take effect as to the government under which they are adjudged. Neither government is called upon to enforce the punishments prescribed on conviction of crime by the other. There is believed to be no authority for any other conclusion.

#### VOTE RECEIVED AT PLACE AWAY FROM THE POLLS.

In Hartford Township, Licking County, Jesse McCassland was permitted by the officers of the election to cast his vote at his own house, remote from the legal place for holding the election, the officers going to his house with the ballot-box and poll-books to receive his vote, because he was sick. He voted for the contestant. His vote was illegally received. No law can tolerate such conduct. No court should receive votes so cast. They have been judicially held illegal. One vote should, therefore, be deducted from the contestant in this precinct.

#### BRIBERY.

There is a great deal of testimony in the record showing that bribery was resorted to for the purpose of securing votes for the contestant, and in many cases bribery is clearly established. But, in view of the laws of Ohio, we deem it unnecessary to refer in detail to the evidence on this subject. The statute of Ohio (1 Swan & Critch., 540, sec. 51) says—

That if any *candidate* or *elector* shall, directly or indirectly, *give* or *promise* any meat, drink, or other reward, with the intention to procure his election, or the election of any candidate, he shall forfeit and pay for every such offense a sum not exceeding five hundred dollars, and if a candidate, be rendered incapable for two years to serve in the office for which he was a candidate.

And it further provides, at page 545, section 11, that—

Any person who shall, by bribery, attempt to influence any elector of this State in giving his vote or ballot, or who shall use any threat to procure any elector to vote contrary to the inclination of such elector, or to deter him from giving his vote or ballot, shall, on conviction thereof, be fined in any sum not exceeding \$500, nor less than \$100, and be imprisoned in the county jail of the proper county not more than six months nor less than one month.

We are not able to find any provisions in the laws of Ohio which disfranchise the elector who receives a bribe for his vote, or any provisions which destroy, invalidate, or reject the ballots cast in consideration of



bribes, or render void or partially void the polls at which such ballots are received. The whole policy of the law seems intended to punish only the persons, whether candidates or electors, who offer the bribes. We cannot extend this policy beyond the settled judgment of the State, however much we may condemn and deplore the policy itself.

#### RECAPITULATION.

Official vote for contestant.....	12, 957
Add votes illegally rejected.....	5
Add to his official vote in Linton Township.....	23
Add to his official vote in Monroe Township.....	10
<b>Making .....</b>	<b>12, 995</b>
Deduct minors .....	9
Deduct insane and idiots.....	8
Deduct non-residents .....	45
Deduct non-residents, (students).....	10
Deduct contestant's majority in Blue Rock Township.....	117
Deduct contestant's majority in Clinton Township.....	381
Deduct double vote in Jefferson Township.....	2
Deduct vote of McCasland .....	1
	<hr/> 573
<b>Total legal vote for contestant.....</b>	<b>12, 422</b>
<b>Official vote for contestee .....</b>	<b>13, 228</b>
Add vote thrown out in Jefferson Township .....	1
Add legal votes rejected .....	3
<b>Making .....</b>	<b>13, 232</b>
Deduct votes in Linton Township.....	23
Deduct votes in Monroe Township.....	10
Deduct minors .....	3
Deduct non-residents .....	32
	<hr/> 68
<b>Total legal vote for contestee.....</b>	<b>13, 164</b>
<b>Total legal vote for contestant.....</b>	<b>12, 422</b>
<b>Legal majority for contestee.....</b>	<b>742</b>

We therefore conclude that the sitting member, George W. Morgan, is duly and legally elected to represent the 13th district of Ohio in the House of Representatives, and that the contestant, Columbus Delano, is not so elected and not entitled to said seat.

M. C. KERR.  
JOHN W. CHANLER.



## JAMES H. BURCH.

The State may regulate the elective franchise within the Constitution.

Report adopted *nem. con.*

December 18, 1867.—Mr. Poland, from the Committee of Elections, made the following report:

*The Committee of Elections, to whom was referred the memorial of James H. Burch, claiming to be entitled to the seat now occupied by Robert T. Van Horn, as representative from the sixth congressional district of Missouri, and the evidence in support thereof, submit the following report:*

The contestant, in his notice to the sitting member, claims that a large number of persons legally qualified to vote in the district offered to register as qualified voters, and took the oath required by the constitution of Missouri; but the officers of registration refused to register them as qualified voters, but placed their names on the rejected list; that these persons, at the election, offered their votes to the election officers, but the same were refused to be received and counted as legal votes, but were placed among the rejected votes; that of these persons thus refused registration and whose votes were not counted, enough voted for the contestant to give him a majority of all the votes cast in the district.

The contestant also claims that the oath required by the new constitution of Missouri, in so far as it prevents persons who were previously voters in the State from voting, by reason of their inability truthfully to take the oath, is invalid and void, because in conflict with the provisions of the Constitution of the United States.

The contestant also claims that the oath required by the new constitution is illegal and void, because the convention by whom the constitution was framed exceeded their powers; and that the constitution was not duly ratified by the people, because none were allowed to vote upon the question of its adoption except such as could take the oath prescribed in it, whereby many previous voters were excluded.

The contestant also charges that, in many townships and counties, the votes received were wrongly certified; that too many certified for the sitting member, and too few for himself; that in some counties legal poll-books were rejected where the contestant had majorities, and in others illegal poll-books were admitted which gave majorities for the sitting member.

The sitting member, in his answer, denies all and singular the charges and claims of the contestant, both of law and fact; and in addition he charges that many illegal votes were cast and counted for the contestant, given by disloyal persons, who had been in arms against the United States, outlaws, guerillas, bushwhackers, &c.; and that these illegal votes for the contestant should be excluded.

The secretary of state certifies that by the returns of votes legally made to him from the sixth congressional district, Robert T. Van Horn had 5,391, and James H. Burch had 4,857.

George Estig, the clerk of Clinton County testifies that, on a careful examination of the poll-book in his office, he finds that James H. Burch received 318 votes in that county instead of 309, as stated in the certificate of the secretary of state. The committee are satisfied that nine votes should be added to the vote of the contestant in the county of Clinton.

The contestant also claims that all the votes cast in the county of



Clinton, except in the township of Concord, should be excluded by reason of the insufficiency of the poll-books returned by the judges and clerks of election in the several townships.

The statutes of Missouri require that the judges and clerks of election, before entering upon their duties, take the oath required by the constitution, and also an official oath prescribed by the statute. The statute gives a form for a poll-book, in which form it is stated that the judges and clerks were duly sworn previous to entering upon the duties of their offices. The committee regard this as a statute requirement that should appear upon the poll-books returned.

Jeremiah V. Bassett was clerk of Clinton County at the time this congressional election was held. He testifies that the poll-books from the townships of Jackson, Shoal, Lafayette, Hardin, and Platte contained no evidence that the judges and clerks of election therein had taken the required oaths. Robert W. Musser, who was deputy clerk during the same time, testifies to the same fact.

These townships gave 375 votes for Van Horn and 189 for Burch. The committee are satisfied that this defect existed in the poll-books of these townships, as stated by these witnesses, (provided it be admissible to show such fact by parol evidence,) and if for that cause they ought to have been excluded from the count then the above number of votes should be deducted from the votes of both candidates respectively, making a difference of 186 votes in favor of the contestant.

The contestant also introduced two witnesses whose testimony tended to prove that Francis D. Phillips, supervisor of registration for Clinton County, induced men to enlist in the rebel army, and so could not truthfully take the oath required by the constitution of Missouri to entitle him to vote or hold office. As these witnesses are not contradicted, the committee are compelled to find the fact proved, if it be of any legal value.

The supervisors of registration for each county are appointed by the governor, and are to be qualified voters. These county supervisors appoint registers in each election district in the county, who are also to be qualified voters.

There is no evidence but that Phillips was in every way legally competent to hold this office, except his inability to take the oath; nor is any question made but that he had, in fact, taken all the necessary oaths and other legal steps to make him a qualified voter; that he was duly appointed to this office by the governor, and had taken all the oaths required by his official station, and had actually assumed and performed the duties of supervisor. The committee are of opinion that his acts as such supervisor cannot be regarded as void, so as to affect the legality of the votes given at the election; that having come into the office under all the forms and requirements of the law, he is at least a good officer *de facto*, whose acts are not to be questioned in a collateral proceeding, but only by some proceeding bringing his title to the office directly in question.

The contestant's evidence tends to establish that Anthony Harsel, supervisor of registration in Clay County, in 1861 was a friend and sympathizer with the southern rebellion; and, uncontradicted, the committee think it sufficient to establish the fact; but as in the case of Phillips, we regard him as being a good *de facto* officer, whose acts cannot, in a collateral proceeding, be held invalid by reason of any defect in his official title.

The only remaining grounds upon which the contestant claims to be entitled to the seat rest upon what is called the *rejected votes*; which



he claims should be counted for him and thus turn the majority in his favor. In April, 1865, a new constitution for the State of Missouri was adopted by a convention of delegates, which was submitted to the vote of the people in the following June, and the votes thereon having been counted and a majority found in favor of its adoption, on the 1st day of July, 1865, the governor of the State issued his proclamation declaring the constitution adopted, and in force from and after the 4th day of the same July. Since that time the new constitution has been regarded by all the departments of the State government as the fundamental law of the State; all the legislation of the State has been conformed to it; all the officers of the State, and of all municipal subdivisions of the State, have been elected and held office according to its requirements, and the State has been represented in both houses of Congress without question as to the validity and binding obligation of this constitution.

The contestant now claims that this State constitution, so far at least as it affects elections of members of Congress, should be held a nullity, and as if it had never been adopted by the people of the State.

This is claimed upon the ground that the convention by whom it was framed exceeded their powers given by the legislative act by which the convention was called, and that this was not cured by its subsequent adoption by the people, because, in submitting it to a vote of the people, those only were allowed to vote who could take the oath prescribed in the second article of the constitution, the effect of which was to preclude large numbers from voting who had been previously allowed to vote. The committee have not deemed themselves at liberty to enter upon this inquiry.

It being conceded that by every department of the State government of Missouri this constitution is recognized and acted upon as the fundamental law of the State, and by Congress in the reception of representatives from the State, it is in our judgment too late for this House to inquire as to the regularity of its formation or adoption by the State.

The third section of the second article of the constitution provides that "no person shall be deemed a qualified voter who has ever been in armed hostility to the United States or to the lawful authorities thereof, or to the government of this State, or has ever given aid, comfort, countenance, or support to persons engaged in such hostility; or has ever in any manner adhered to the enemies, foreign or domestic, of the United States, either by contributing to them, or by unlawfully sending within their lines, money, goods, letters, or information, or has ever disloyally held communication with such enemies, or has ever advised or aided any person to enter the service of such enemies; or has ever, by act or word, manifested his adherence to the cause of such enemies, or his desire for their triumph over the arms of the United States, or his sympathy with those engaged in exciting or carrying on rebellion against the United States; or has ever, except under overpowering compulsion, submitted to the authority of the so-called 'Confederate States of America,' or has ever left this State and gone within the lines of the armies of the so-called 'Confederate States of America' with the purpose of adhering to said States or armies; or has ever been a member of, or connected with, any order, society, or organization inimical to the government of the United States, or to the government of this State; or has ever been engaged in guerilla warfare against loyal inhabitants of the United States, or in that description of marauding commonly known as 'bushwhacking,' or has ever knowingly and willingly harbored, aided, or countenanced any person so engaged; or has ever come into or left this State for the purpose of avoiding enrollment for, or draft into, the military service of the



United States; or has ever, with a view to avoid enrollment in the militia of this State, or to escape the performance of duty therein, or for any other purpose, enrolled himself, or authorized himself to be enrolled, by or before any officer as disloyal, or as a southern sympathizer, or in any other terms indicating his disaffection to the government of the United States in its contest with the rebellion, or his sympathy with those engaged in such rebellion; or, having ever voted at any election by the people in this State, or in any other of the United States, or in any of their Territories, or held office in this State, or in any other of the United States, or in any of their Territories, or under the United States, shall thereafter have sought or received, under claim of alienage, the protection of any foreign government, through any consul or other officer thereof, in order to secure exemption from military duty in the militia of this State, or in the army of the United States; nor shall any such person be capable of holding in this State any office of honor, trust, or profit, under its authority, or of being an officer, councilman, director, trustee, or other manager of any corporation, public or private, now existing or hereafter established by its authority; or of acting as a professor or teacher in any educational institution, or any common or other school; or of holding any real estate or other property in trust for the use of any church or religious society or congregation."

The fourth section of the second article makes it the duty of the legislature to immediately provide by law for a complete and uniform registration of voters in the State.

The fifth section of the same article provides:

After such a system shall have been established, the said oath (presented in the next section) shall be taken and subscribed by the voter at the time of his registration. Any person declining to take said oath shall not be allowed to vote or to be registered as a qualified voter. The taking thereof shall not be deemed conclusive evidence of the right of the person to vote or to be registered as a voter, but such right may, notwithstanding, be disproved, and after a system of registration shall have been established, all evidence for and against the right of any person as a qualified voter shall be heard and passed upon by the registering officer or officers, and not by the judges of election. The registering officer or officers shall keep a register of the names of persons rejected as voters, and the same shall be certified to the judges of election, and they shall receive the ballot of any such rejected voter offering to vote, marking the same and certifying the vote thereby given as rejected; but no such vote shall be received unless the party offering it take, at the time, the oath of loyalty hereinafter prescribed.

The material part (for the purpose of the present inquiry) of the oath prescribed in the sixth section is the following:

That I am well acquainted with the terms of the third section of the second article of the constitution of the State of Missouri, adopted in the year eighteen hundred and sixty-five, and have carefully considered the same; that I have never, directly or indirectly, done any of the acts in said section specified; that I have always been truly and loyally on the side of the United States against all enemies thereof, foreign and domestic, &c.

The ninth section of the same article provides that, after sixty days from the time the constitution takes effect, no person shall be "permitted to practice as an attorney or counsellor-at-law, nor after that time shall any person be competent as a bishop, priest, deacon, minister, elder, or other clergyman of any religious persuasion, sect, or denomination, to teach or preach, or solemnize marriages, unless such person shall have first taken, subscribed, and filed said oath."

Under this ninth section of the constitution arose the case of *Cummings vs. The State of Missouri*, (4 Wallace, 277,) in which it was held by a majority of the Supreme Court of the United States that this provision, having the effect to deprive persons of the right to practice professions and pursue avocations lawful in themselves, in consequence of acts done prior to the adoption of the constitution, could only have been



intended as punishment for such acts, and was therefore in essence and substance an *ex post facto* law, and therefore forbidden by the Constitution of the United States.

The contestant claims that the same application of principles requires the same decision in relation to voters; that the virtual disfranchisement of persons who were voters under the previous constitution and laws of the State, but who are prevented from voting under the new constitution by reason of their inability to take the oath it requires, can only be regarded as a punishment for the act which stands in the way of taking the oath, and that the Constitution of the United States prohibits the infliction of punishment by subsequent legislation.

If such disfranchisement must be regarded as established for the purpose of punishing the persons thus deprived of the right of voting, it must be admitted to come entirely within the reasoning by which the above cited judgment of the court is supported.

Your committee believe that the provisions of the new constitution of Missouri may be supported, so far as they require this oath of voters, without at all trenching upon the decision of the Supreme Court.

Each of the States of the Union have hitherto regulated suffrage within their own limits for themselves, and in such a manner as the people of the State deemed most conducive to their own interests and welfare. Suffrage is a political right or privilege which every free community grants to such number and class of persons as it deems fittest to represent and advance the wants and interests of the whole. No State grants it to all persons, but with such limitations as the interests of all and the interest of the State require.

When once granted it is not a vested, irrevocable right, but it is held at the pleasure of the power that gave it, and the State may, by a change of its fundamental law, restrict as well as enlarge it. When, therefore, the State of Missouri, in changing its constitution, saw fit to declare that the interests of the State and of the people of the State would be promoted by withholding the right of voting from all persons who could not take the prescribed oath, they exercised no greater or higher power than exists in every State.

The committee do not feel justified in entering into any enlarged discussion of this point of constitutional law, and therefore merely state the facts and their conclusions thereon.

But the contestant claims that persons who, under all the requirements and restrictions of the new constitution, were entitled to vote were excluded from registration as qualified voters, and their votes placed on the rejected list, and to a sufficient extent, if counted, to have made a majority for him. It appears from the evidence that many persons who offered themselves for registration were rejected by the officers of registration, and their names placed on the rejected list; that a large number of these persons appeared at the polls and offered their votes, but they were, under the provisions of the constitution and laws of the State, marked as rejected votes, and not counted for the person for whom they were given. The evidence shows that the following number of rejected votes were cast in the several counties in the district, and that they were divided between the sitting member and the contestant as follows:

	Burch.	Van Horn.
Clinton County .....	122	..
Ray County .....	274	..
Lafayette County .....	235	..
Jackson County .....	343	5



	Burch.	Van Horn.
Clay County .....	507	1
Carroll County .....	126	1
Saline County .....	569	1
Platte County .....	325	1
	<hr/> 2, 501	<hr/> 8
	<hr/> <hr/>	<hr/> <hr/>

There was no evidence before the committee as to any rejected voters in the counties of Caldwell and Chariton. The contestant claims that 48 rejected votes were cast for him in the township of Concord, Clinton County, 62 in Lexington, and 23 in Davis, in Lafayette County, which were not counted even among the rejected votes, on account of some informality in the returns.

The evidence relied upon by the contestant to prove that the persons who were thus refused registration as qualified voters, and whose votes were received as rejected votes, is almost entirely of a general character. No evidence applies to more than half a dozen persons by name, and the right of all these to vote is not well established. Eli M. Lyons, speaking of the rejected list in Plattsburg, Clinton County says: "They are among the most substantial, wealthy, and exemplary citizens of the county." Robert Johnson, in his testimony, says "he is acquainted with most of the men who voted on the rejected list in Clinton County, and does not know of any one of them who was disloyal within the meaning of the terms of the new constitution of Missouri." George Funkhouser says of the rejected voters in Clinton County, "I did not regard the alleged sympathies for which such voters were rejected as amounting to disloyalty to the government of the United States. They were and yet are peaceable and law-abiding citizens, and law-sustaining, claiming to be loyal, notwithstanding their sympathies."

The above are fair specimens of the evidence relied on to establish the right of those on the rejected list to have been registered, and voted as qualified voters in the counties of Clinton, Clay, Carroll, and Platte. There is no evidence as to the character of the rejected voters in the other counties of the district.

The evidence of the contestant tends to show that the restrictions and disqualifications created by the new constitution were very rigidly enforced, and some instances of partisan unfairness are shown, but to what extent this operated to exclude lawful voters from registration, and who such voters were, is left wholly vague and uncertain. The only evidence in the case is that taken by the contestant, and it is probable that much of the appearance of unfairness would have been dispelled if evidence had been taken by the sitting member.

If the class of evidence introduced by the contestant had been the only means within his reach to establish the right of the persons rejected to be registered and vote as qualified voters, there would be very plausible ground to claim that enough ought to be presumed from it to at least vacate the election, unless what is proved by the contestant was rebutted by evidence from the other side. But the contestant was not confined to this proof or evidence of this general nature at all. The provisions of the constitution and laws of Missouri furnished him peculiar facilities to establish his case, if he relied upon proving that legal voters were excluded from registration and voting as qualified voters, inasmuch as the rejected list of the registers and the rejected votes furnished the names of the persons and the candidates for whom they voted.



Under these circumstances, the committee consider they have no right to rely upon such vague and general evidence as has been furnished, or to draw presumptions and conclusions from it when it was clearly within the power of the contestant to have established the facts he asks us to presume by clear and exact proof, if such facts exist.

The committee consider, also, that in order to unseat a member of this House who has the regular certificate of election, and who is conceded to have received a majority of several hundred votes of the votes received and counted, they should be able to report whose votes were excluded that ought to have been counted; that it would not do for the committee or for the House to say that out of twenty-five hundred rejected voters, all of whose names are unknown, they are satisfied that enough were legal voters and ought to have been counted to give the contestant a majority.

Your committee therefore recommend the adoption of the following resolutions:

*Resolved*, That James H. Birch is not entitled to a seat in this House as a representative in the fortieth Congress from the sixth congressional district of Missouri.

*Resolved*, That Robert T. Van Horn is entitled to a seat in this House as a representative in the fortieth Congress from the sixth congressional district of Missouri.

---

### MCGRORTY vs. HOOPER.

The first resolution declaring McGrorty *not* entitled to the seat was adopted. The second was tabled, (July 23, 1868,) leaving Hooper in the seat.

July 9, 1868.—Mr. Chanler, from the committee of Elections, submitted the following report:

*Report of the Committee of Elections upon the contested election case of McGrorty vs. Hooper, sitting delegate from the Territory of Utah, referred to the Committee of Elections, first session fortieth Congress, 1868.*

*To the House of Representatives :*

Your committee, to whom the above case was referred, respectfully report that from the testimony presented to them by the respective parties claiming seats in this House for the fortieth Congress as delegates from the Territory of Utah, they have come to the conclusion set forth in the accompanying resolutions. A brief statement of the facts presented and the argument thereon, and the reasons which impressed your committee as worthy of the knowledge of the House, are herewith respectfully presented in the report and appendix. William McGrorty, contestant, in his brief sets forth the following, as in schedule marked A.

#### A.

WILLIAM MCGRORTY vs. WILLIAM H. HOOPER.

*To the honorable the Chairman of the Committee of Elections :*

The contestant presents his claim to the seat of the sitting delegate from the Territory of Utah, and in doing so asks the serious consideration of the committee to the questions involved, believing as he does that many of them are of the highest national importance.



On the 10th of January, 1867, the following act, passed by the legislative assembly of the Territory, became a law by receiving the approval of the governor:

"AN ACT to provide for the election of a delegate to the House of Representatives of the United States.

"SECTION 1. *Be it enacted by the governor and legislative assembly of the Territory of Utah,* That an election shall be held on the first Monday of February, 1867, at the usual places of holding elections in the several counties of the Territory, for the election of a delegate to the House of Representatives of the fortieth Congress. The election shall be held, conducted, and returns thereof made, agreeable to an 'Act regulating elections,' approved January 3, 1853. The delegate for the forty-first Congress shall be elected at the general election, on the first Monday of August, 1868, and biennially thereafter.

"SEC. 2. This act shall be in force from and after the passage thereof.

"Approved January 10, 1867."

In conformity with the foregoing enactment, an election was held in the various counties on the 4th day of February, 1867.

The following is an abstract of the returns of said election, prepared by the secretary of the Territory:

*Abstract of the election held in the Territory of Utah, on the 4th day of February, A. D. 1867, for a delegate to the Congress of the United States.*

Counties.	From whom returns received.	Number of votes and for whom cast.		
		Wm. H. Hooper.	Wm. McGroarty.	Negro Sy.
Kane .....	A. L. Siler, deputy county clerk .....	183	.....	.....
Washington .....	No returns .....	.....	.....	.....
Iron .....	S. S. Smith, county clerk .....	221	.....	.....
Beaver .....	William Frotheringham, county clerk .....	339	.....	.....
Piute .....	No returns .....	.....	.....	.....
Millard .....	John Kelly, county clerk .....	879	.....	.....
Sevier .....	No returns .....	.....	.....	.....
Juab .....	Samuel Pitchforth, county clerk .....	244	.....	.....
San Pete .....	F. C. Robinson, county clerk .....	1,405	.....	.....
Utah .....	L. John Nuttall, county clerk .....	2,993	.....	.....
Wasatch .....	J. McNaughton, county clerk .....	264	.....	.....
Great Salt Lake .....	E. W. East, county clerk .....	2,186	41	6
Davis .....	Arthur Stayner, county clerk .....	802	.....	.....
Weber .....	Walter Thompson, county clerk .....	539	.....	.....
Box Elder .....	J. C. Wright, county clerk .....	337	.....	.....
Tooele .....	R. Warburton, county clerk .....	275	64	.....
Summit .....	R. O. Allred, county clerk .....	423	.....	.....
Morgau .....	T. R. S. Welch, county clerk .....	565	.....	.....
Cache .....	H. K. Cranney, county clerk .....	3,413	.....	.....
Richland .....	No returns .....	.....	.....	.....
Green River .....	No returns .....	.....	.....	.....
		15,068	105	6

On the 23d of February, 1867, the contestant deposited in the office of Wells, Fargo & Co., at Great Salt Lake City, a notice directed to the Hon. William H. Hooper, and a similar notice to the Clerk of the House of Representatives, notifying them that he should contest the seat of said Hooper, which notices were received in this city, and delivered to the parties to whom they were addressed, some time in the month of March following.

The reasons why the grounds were not stated in the notice are fully set forth in the



affidavit of contestant, made on the 18th of January, 1868, which has been placed before the committee, with the other papers in the case; and it is confidently submitted that those reasons are sufficient to excuse him from a literal compliance with the law. It is there shown that it would have been impossible to contest the election in the usual manner because of the hostility of the Mormon leaders, endangering the lives of himself and friends, and the destruction of the ballots and lists of voters, at the time when the notice was sent to Mr. Hooper.

Independent of the facts contained in said affidavit, contestant claims to have made a complete case, showing a paramount right to the seat, and that the sitting delegate should be rejected, upon grounds which could not have been obviated by any proceeding in the Territory. He therefore respectfully asks for a hearing before the committee, even should the reasons contained in said affidavit be deemed insufficient.

On the 20th of January, 1868, contestant caused to be served on said Hooper a copy of the affidavit referred to, and a notice containing the grounds upon which contestant relies.

They are seven in number, but may be reduced to five, as follows:

1. That the sitting delegate represents a community separated from and hostile to the other portions of the people of the United States, and organized and acting in disregard and violation of the laws of the United States, under an anti-republican form of government.

2. That he is the representative of the institution of polygamy.

3. That his secret oath, taken in the Mormon church, disqualifies him from sitting as a delegate in the Congress of the United States.

4. Contestant claims to represent the law-abiding people of the Territory, and to have received the only votes cast at the election of February 4, 1867, which can be recognized by the committee.

5. Under the head of the illegality of the election of the sitting member, contestant specifies—

1. That there were about eight times as many votes cast for the sitting delegate as there were legal voters in the Territory.

2. The mode of voting was by proxy, a method unauthorized by law and unknown to our institutions.

3. The election was under the control of a secret organization, sworn to hostility to the American people, thus directly endangering the personal safety of those who voted for contestant.

4. The illegality and insufficiency of the returns made to the secretary of the Territory.

5. That the election in Summit County was continued for two days, contrary to law.

6. That ballots were cast by proxy for aliens and minors indiscriminately.

7. That votes were cast in favor of the sitting delegate in behalf of large numbers of persons who never appeared at the polls.

William H. Hooper, sitting delegate, in reply sets forth the following, as in schedule marked B:

#### B.

#### A STATEMENT OF THE POSITIONS RELIED UPON BY THE SITTING DELEGATE, WILLIAM H. HOOPER.

The sitting delegate, William H. Hooper, objects to the course of proceedings in this case, because it does not conform to the law in any respect, nor to any established precedents.

2. No reason whatever is shown why contestant has not complied with the law regulating contested elections. His own affidavit, filed and sworn to more than eleven months after the election was held, is wholly unsupported by that of a single other person whose statement has been taken, and is pointedly contradicted by the statements of men of character and position, residents of said Territory, and not members of the Mormon church, to wit: the affidavits of F. H. Head, superintendent of Indian affairs, Utah Territory; Amos Reed, late secretary and acting governor; S. P. McCurdy, late associate and now chief justice of Utah; Frank Fuller, late acting governor of Utah; and also by the statements of forty-one citizens, not Mormons, who are the leading merchants, bankers, and business men of Salt Lake City; all of whom state that contestant could, at any time since the election held on the 7th February, 1867, have proceeded with this case in the manner prescribed by law, with entire and perfect safety to himself, without the least possible danger of personal violence; and who state further that the fullest freedom and expression of opinion is indulged in and tolerated in said Territory, and that McGorrtly himself publicly announced it often and repeatedly upon the streets in Salt Lake City, prior to his leaving said Territory; that he was contesting the seat of the sitting delegate; was in no manner molested on account of said announcement; and yet, in the face of all these facts, he took no steps toward preparing his notice of con-



test even, either before the regular session of March, 1867, nor in July following, nor yet again before the beginning of the December term of the same year, but waited until the 18th day of January, near a whole year after the election, and when near half the term of the fortieth Congress had expired. Under these circumstances the sitting delegate insists that there is neither a shadow of law nor of fact under which the contestant can ask the Committee of Elections or the House to act in this case. The law regulating contested elections requires notice of contest to be filed within thirty days after the result of the election has been ascertained officially. (See Statutes at Large, vol. ix.) The sitting delegate ventures to assert that this is the first time in history that a contestant has asserted that the laws of Congress regulating the rights of persons claiming seats in its body do not apply to Territories.

3. The *ex parte* affidavits cannot be used as evidence to try this case on its merits; no law or precedent would authorize this, and these of themselves show no reason why contestant should be allowed an order of the House to be permitted to take testimony under the law. Such being the case, the contestant has no right to be heard upon the merits of the case, and the House no right under any law or precedent to act upon contestant's claim as it now comes before it.

4. The sitting delegate specifically objects to the notice of contest as not legal, not being filed under any law or precedent, (near twelve months after said election.) The law not having been complied with, the sitting delegate was not bound to answer. An answer would have been a waiver of his rights to have this case tried in the usual manner prescribed by law and established by precedent.

5. For the same reason he objects to the use of the depositions of Smith and Williamson. He did not appear to cross-examine, because an appearance would have been a recognition of the illegal proceeding, which would have committed him to a defense before the committee. The notice itself of contest being illegal, all proceedings under it fall.

6. These two witnesses do not agree in their statements, and prove nothing against the sitting delegate, who denies that he has ever at any time taken any oath which could in any manner interfere with his duties as a loyal and law-abiding citizen of the United States; and he further states, that to the best of his knowledge and belief there is no oath taken or required to be taken by the people known as Mormons, under any rule of their church, inconsistent with their duties as loyal and law-abiding citizens of the United States.

7. On contestant's printed affidavits, all that he has filed, as well as on the statements of Smith and Mrs. Williamson, he makes no case for himself, and none against the sitting delegate. By these *ex parte* statements, taken before he had even filed his notice of contest, he only shows what he has alleged as irregularities in two voting precincts; and should the vote of the two whole counties in which the precincts are located be rejected, the sitting delegate has over twelve thousand majority; McGrorty but sixty-four votes—these being the only two counties to which *ex parte* statements have been taken as to irregularities, and the evidence is not sufficient as to these.

8. The returns of the election, as shown by the papers filed by contestant, are made in strict conformity to the laws of the Territory. (See Territorial Laws of Utah, pages 88, 90, 206, 92, and 26.)

9. All the alleged occurrences of outrages, cited by contestant in his argument, occurred there, by his own showing, from eight to fifteen years ago. Even if true, which is not admitted as charged by the contestant, they fall far below the number and degree of outrages which occur in all newly settled Territories, and are not worse either in acts or words than are of constant and almost daily occurrence in the oldest and most thickly peopled States of the Union, can have no kind of relation to this contest, and the sitting delegate denies their competency as testimony herein, not bearing on him or this case in any manner whatever.

10. Restating his objection to the whole proceeding because contestant has in no manner complied with the law, and has shown no reason for not complying with the same, and not waiving any right he has by reason of this failure, the sitting delegate insists that contestant has made no show of claim for himself and no case whatever against the sitting delegate. He states further that if it be the object of the contestant, McGrorty, and his friends, as would appear from the opening sentence in the printed argument of the counsel, Mr. C. B. Wait, "to induce the people through their national legislature to take hold of the complicated political problem arising out of the settlement of Utah Territory, and solve it upon principles of justice, of moderation, and of sound statesmanship," the sitting delegate has no sort of objection to their doing so in the proper manner, and here challenges the fullest and fairest examination by Congress in a legitimate manner into all that pertains to said Territory and its people, and he here pledges himself, and the people of said Territory of Utah, to give every facility that may be needed to throw light upon all that may be desired to be examined into, to the end that the whole status of said Territory and its people and their relation to the government of the United States may be fully understood.

11. As to the indirect personal allusions made by contestant's counsel in his printed



brief, which he has furnished the committee and circulated among the members of the House, wherein, by insinuation, he seeks to implicate the sitting delegate in crimes, the sitting delegate has no hesitancy in denouncing such as untrue in every particular, and there is not a particle of justification for such insinuations, even upon the *ex parte* statements upon which alone contestant rests his case. He does not deem it his duty, nor this the time or place, to notice them further. Neither does he here notice the great mass of matter, which counsel has brought out in his printed brief, reflecting upon the people of Utah, and charging disloyalty upon them, and hostility to the United States, for the reasons heretofore assigned, "contestant in no manner having complied with the law, and having shown no reason for not complying therewith." To have entered into a refutation of these calumnies, which can be done by the same authorities from which contestant has selected his extracts, would have been an acknowledgment of the right of contestant to have had the committee to act upon and decide this case upon the mere *ex parte* statements of contestant, his counsel, and his friends, thereby disregarding every principle of law, as well as the rules and statutes regulating the production of testimony.

The whole course of said people of Utah challenges history for a parallel in devotion to that government of which they form a part. Persecuted and driven from their homes more than twenty years ago, while stripped of almost everything necessary to life, and houseless and homeless on the west bank of the Missouri, they promptly answered the call of the United States then engaged in a foreign war; furnished all the men asked for soldiers; penniless they took up their line of march, and westward moved with their families, their wives and their little ones, over barren plains, through hostile bands of savages; twelve hundred miles from civilization, after having endured untold hardships, they came to a halt, in what was then a desert. This desert, in this short space of time, they have filled with more than one hundred thousand people, and by their industry and frugality have made it a prosperous land, enabling them thus to add greatly to the rapid settlement and development of the country surrounding them. The very first step taken by the expelled exiles after once being settled in their new homes was to seek to connect themselves again to the federal Union, and to ask a government guaranteed by its laws; and although they have been constantly abused, and almost continually denounced, even by many who have held high places, they have never ceased to seek and cultivate more intimate relations with the government and people of the United States, and no people look forward with more eagerness and earnest delight to the completion of that great work which is soon to bring them and their once isolated country, in reality, almost to the very doors of the nation's capital.

In review of the grounds on which contestant relies, your committee deemed it their duty to present to this House their opinion of the charges set forth therein by the contestant, to wit:

That the sitting delegate represents a community separated from, and hostile to, the other portions of the people of the United States, and organized and acting in disregard and violation of the laws of the United States, and under an anti-republican form of government.

2d. That he [the sitting delegate] is the representative of the institution of polygamy.

3d. That his secret oath, taken in the Mormon church, disqualifies him from sitting as a delegate in the Congress of the United States.

Your committee report that the Territory of Utah is geographically remote, and by natural barriers separated from the other portions of the people of the United States; that any community living in the Territory of Utah would, for many reasons, be liable to the above charge; or might, under the laws regulating society, become separated from their fellow-citizens. Such separation is the reasonable consequences of the law of emigration, and applies with equal force to all the communities in the United States who, by laws peculiar to themselves, or from geographical barriers, are separated from other portions of the people of the United States.

The allegation that the community alluded to by contestant is "hostile to the other portions of the United States, and organized and acting in disregard and violation of the laws of the United States under an anti-republican form of government," is one of very grave importance, and demands the earnest attention and examination of this government. To arrive at a decision as to the truth and justice of this allegation, your committee were necessarily compelled to look for proof over a wider range of facts and statements than is usual in ordinary contested



election cases. They had to discuss questions of a social, political, and religious character, presented to them by the contestant as grounds of his charge against this community. The delay which has occurred in this case is owing to the time necessary to collect and collate facts in regard to such novel questions arising in so remote a Territory; and your committee felt it to be their duty to grant to the sitting delegate every opportunity to make out his statement of facts and prepare his reply to the contestant.

Abundant opportunity was therefore given to the sitting delegate to communicate with his constituents before any action, even of a preliminary character, was taken by your committee which might anticipate their decision upon, or work prejudice to the rights of the sitting delegate. The report of your committee has been drawn up after proper and reasonable delay, in a spirit of honest inquiry.

The labors attendant upon this subject were not light, and the conclusions furnished by your committee are the result of research among the established authentic records of the community which the contestant charges with being anti-republican. Your committee have been induced to give a full examination to much collateral information in authentic printed works relating to Utah and her people, referred to or laid before your committee by both parties in this case.

It is reasonable that the following statement, so far as it refers to the character and customs of the Mormons, who form a large majority of the people of Utah, should be prefaced by some explanatory words. All that is here presented by your committee is the result of reading and testimony, oral or written, and not from their own personal knowledge or observation among the Mormons in Utah.

In the opinion of your committee, no fair conclusion can be reached by any such indirect method of examination. Certainly no philosophic inquiry into the nature and tendency of any system can be worth much which is developed from hearsay and the inner consciousness of the inquirer. Had De Tocqueville published his valuable and just criticism upon the institutions of this country without personal examination of their workings and without a sojourn among us, although his conclusions might have been the same, their weight upon other minds would have been very materially lessened.

A brief summary of what your committee has undertaken will perhaps be acceptable, and remove the necessity of future explanation.

The novelty of the subject presented to it for report gave naturally great interest to the task imposed, of ascertaining—

I. What is Mormonism?

II. The relations of Mormonism to Utah, and the relations of Utah to this government.

III. The duties of this government to Utah and its inhabitants, and the remedies proposed for existing evils in the administration of the laws of Utah.

IV. The contested election case of McGrorty against Hooper; with the conclusion arrived at in the mind of your committee.

I. What is Mormonism?

The Mormon doctrine appears to be nothing original or strange, but is a combination of various phases of opinion on religious dogmas; a concentration of the old, obsolete eccentricities of fanaticism, accommodated to the spirit of religious toleration and adapted to the political machinery of this government.

Mormonism is a natural outbreak in the nineteenth century of two great



principles of human thought, action, and belief in all ages. There is nothing new in it, except its success, as illustrated in the Territory of Utah.

1. The yearning after mysticism in every soul seeking a better knowledge of God, the Great Mystery, the Spirit past finding out.

2. The restless longing of the mind for social reform, in a world where all systems are more or less a restraint on hoped-for improvement.

Out of these two principles Mormonism has brought forth the old dogmas of theocracy and spiritual wifery—the latter Gothic Scandinavian and European; the other, Jewish and Asiatic.

The history of this society develops the fact that New England, New York, and Pennsylvania furnished the men by whom and the hints on which Mormonism is built up.

Smith, the founder, and his family, were from Vermont; Brigham Young, the present head, and his family, are from Massachusetts, where the theocracy of the Puritan was the basis of all social and civil rule. Sidney Rigdon, the first spiritual power in the society, and the translator of the Mormon tablets, was from Pennsylvania, where spiritual wifery is an old and established institution among certain sectarians. The two first of these three men lived and were educated in the State of New York, among a people peculiar for their zealous yearning after excitement and novelty; the spiritualists, gold-hunters, free-lovers, and rappers of western New York. Add to these a learned Jew, professor of Oriental tongues, from one of the colleges of New York, who was for a long time connected intimately with the above-named leaders and founders of Mormonism, and if not a Mormon, certainly as the close and confidential teacher among them, and we have the ingredients of this new society.

The Gothic mysticism of Germany, mingling with the witchcraft and fervor of Puritanism, all filtered through a Hebrew brain and shaped by American shrewdness into material wealth and political power—such is Utah to day in the hands of the Mormon leaders, as presented by history.

Throwing aside all religious tests and distinctions, and looking only at the political phase of this subject, an answer to the question, What is Mormonism? may best be found in the practice customary among the leaders of the Mormons., viz, of promulgating their laws as "special revelations" from a Supreme Being through their seer or prophet, or as the interpretations of their sacred books by the hierarchy, and allowing the mass of the people of Utah to vote upon questions deemed advisable and right by their leaders. It is a direct appeal to the superstition and absolute obedience of the masses, and clothes the ruler who controls that superstition with an unlimited power. The dominion of one man or class of men installed by divine revelation, so long as the people under that dominion believe in and support it, is beyond the reach of logic, satire, or reform. The only consistent change is through a new revelation from the same source.

That people of *themselves* can never attempt any reform. Their political organization being divine in its origin, must be for their good. To assail the government is to outrage God. To submit is peace, prosperity, and power.

Fervent fanaticism, laborious zeal, pious submission, and uncomplaining patience, mark the labors of such a people. Heroic deeds, conquest of seeming impossibilities, magic success amid the terrors of defeat, adorn their history. Exclusiveness, secrecy, cruelty, and cunning are the common evils of all such organizations.



Morals thrive or not as the last revelation dictates. The whole fabric of domestic as of public life is at the mercy of diurnal revolution or divine revelation. In a word, the human judgment of the individual in such a society is but the instrument for good or bad in the power of the prophet who reveals the divine mandate. He may bless or curse; increase or diminish; lift up or throw down whom he will. His will is law; he is the voice of God.

The success among the American people of the peculiar teachings of the hierarchy of Utah, so inconsistent with our principles of government and social life, is worthy of special attention. It seems reasonable to attribute it to a strong motive and longing common to every race or nationality, and is the embodiment of an inevitable scheme, viz, a national church—an American church with its own peculiar martyrs, saints, prophets, priests, and ritual.

Christianity in all ages has undergone transformations and developments of this kind.

The Greek empire founded the Greek church. The Roman empire founded the Roman church. The English spirit of empire founded the English church for the British empire.

Luther founded a church for the national heart of Germany. Calvin founded a Swiss church suited to the national tastes, prejudices, and opinions of a people whose personal independence is the epitome of their national freedom.

In the constitution framed and uttered by the inhabitants and residents of Windsor, Hartford, and Weathersfield, "cohabiting and dwelling upon the river Connecticut and lands thereunto adjoining," the formula of a new American hierarchy was hinted at in 1638, when they "associated and conjoined themselves to be as one state or commonwealth." The bold and free spirits of those English Puritans refused to surrender civil liberty to church supremacy; but the Bible, as they interpreted it, was made the common oracle of state; its interpretations, in matters of state, being left to the chosen representatives of the people exclusively, without binding the popular mind to any superstitious observances or ritual obedience. The church and state, however, of Connecticut were substantially a unit.

Here the idea of an American independent church organization was clearly and boldly announced, and its safety secured by the state which gave it being. This germ of state church naturally would take root in congenial soil, and, on favorable opportunity, grow to be suitable to the demands of its worshippers.

Thus the blue-laws of Connecticut furnish, perhaps, the best instance among many like efforts in our own national history to make divine revelation the moving power in the daily administration of government.

To the development of the principles and practice established in the blue laws by the descendants of the same and kindred people, in a later day, in a more extended country, among a less educated or less primitive population, may the origin of Mormonism be consistently traced.

The origin of Mormonism, like that of any society of religionists, bears very little resemblance to its present extended influence. But your committee think they find the cause of the rapid advance; among Americans born and of Protestant creed, of the peculiar teachings of the first preachers of this society, in a sympathy with the discovery of an American Bible, relating to the aboriginal races of this continent, by which the dwellers on this hemisphere were brought, as it were, in nearer communion with the God of Mount Sinai, who thus became the dispenser of a new and special moral code, added to the Holy Scriptures, already



accepted and interpreted as a divine covenant with this peculiar section of the earth. Both Papists and Protestants of Europe were induced to immigrate under the consciousness that each party or religious society was God's chosen people. Nearly all races of men have at some period indulged in this longing to be the special care of the Divine Being. In New England, New York, and Pennsylvania, where the founders of Mormonism made their greatest number of converts, these views are the natural result of the teachings of our forefathers—that we are His peculiar care, in contradistinction to the persecutors who drove them abroad from Europe.

The Mormons believe that the New Jerusalem of Holy Scripture is to be on the continent of North America. Having persuaded themselves of this pleasing fact, they proceed to choose a suitable spot for the building of so desirable a citadel, and find it very profitable. All persons wishing to emigrate to America, and ignorant of the condition of our society and laws, would naturally lend a willing ear to so tempting a proposition as that which secures them a home in this world and the next at the same time, at one venture, and under economical leaders to defray the expenses in advance.

Herein seems to be the secret of their proselyting among the ignorant rural population of remote countries. The hierarchy of Utah receive the first benefits of all the success of their church at home and abroad, and dispense them to the people in accordance with the customs of their organization.

But for a full and just view of this subject your committee must refer to the well-established record of the origin and progress of this political society. Appended is a brief summary of the origin and development of the Territory of Utah and its inhabitants. From such records it will be seen that the character of this organization has changed very materially since its origin. There are several marked periods in the course of its development worthy of the notice of the political student:

1. It seemed to be only a religious sentiment in the mind of a few zealous persons at Fayette, New York.
2. It appeared as a financial corporation of land speculators under the direction of a presiding officer called a prophet, as at Kirtland, in Ohio. Bankruptcy overwhelmed this undertaking, and the leaders fled from the sheriff, and did not rely on the divine character of their leader or the devotion of his followers to oppose or avert the course of law.
3. As a successful trading post at Independence, in the State of Missouri, the organization acquired great wealth and influence. The development of their system to meet the necessities of a rapid increase of population and property is very worthy of observation and reflection. Here, however, too rapid material success aroused the cupidity or envy of persons not included in the enterprise, and many altercations took place between the Mormons and the Gentiles. A severe collision resulted in a treaty between the State and Mormons, which stipulated for the departure of the Mormons from the State of Missouri—when the fourth period of their development took place, at Nauvoo, in Illinois, whither they migrated after leaving Missouri. A political influence and material prosperity greater than any previous period was the result; but it proved fatal to their singular and sagacious leader, who was shot in jail by a mob. The people of Illinois had become incensed at the open violation of their laws, and demanded that the Mormons should leave their State. Then came the period fifth, of flight across the Missouri River on the ice and over the staked plains of the desert to the present Territory of Utah, under the leadership of the present chief of the Mormon organ-



ization. The present, or sixth period, embraces the relation of the Mormons to the United States as residents of the Territory of Utah, which has been characterized by great energy, perseverance, courage, and success.

The civilization of Europe has through this society been planted in an oasis between two deserts, nearly half-way between the Missouri and the Pacific, among hostile Indians, and in face of great and threatening dangers from man and nature. The wilderness has been reclaimed and made beautiful with varied and rich harvests, and shelter for the emigrant across the plains to California, furnished with well-established hospitality. Our troops rely on the industry of the people of Utah for their forage, comforts, and luxuries. The missionary from the Eastern States is tolerated and safe in the city of Salt Lake. The principles of thrift, enterprise, and good order are recognized and protected.

Among all this great evils exist, great crimes have been committed and have been let go unwhipped of justice. Open violation of the authority of this government has frequently occurred. The sanctity of the ermine has been profaned, the course of justice obstructed. Organized assassination has been frequently perpetrated.

The revelations of the seer have a higher authority than the laws of Congress. The sermons of the Mormon apostles have an edifying effect in Salt Lake City, quite equal in the opinion of their followers to those of certain preachers in the cities of the East, and of more weight than a judicial decision. Intolerance, wrangling, violence, and polygamy have marred the administration of our laws in Utah, and have weakened the authority of the United States. Why?

1. Because the organic law of the Territory does not remedy the evils local and peculiar to Utah, thereby leaving the dominion and control of the Territory and its resources completely in the hands of the hierarchy of the Mormon society.

2. Because the monopoly of wealth and power in the Territory is to a great extent in the hands of the Mormon leaders, excluding competition from the so-called Gentiles, *i. e.*, citizens of the United States not members of the Mormon society; the preference being by custom given to a Mormon whenever competition is likely to injure the Mormon interest.

3. Because the Gentile immigration is through the Territory, and does not remain in force sufficient to influence Utah. The trains going west pass along the same beaten track through the cañons, along the salt lakes, across the Sierra to California. The temptations of gold mines and silver mines have built up California, Nevada, New Mexico, Montana, Idaho, and Colorado; but the stern fanaticism of the Mormon, or his abiding faith, or his religious zeal, have made him steadfast to agriculture along the shores of his sacred lake. The advantage has, in many respects, been with the Mormon. He has developed a solid and enduring wealth. Agriculture, manufactures, mining, and trade—in fine, industry of every department—thrive among the people, and they are naturally jealous of intrusion and competition on the field of their own enterprise, created by their own labor, at great risk, through many dangers.

4. Polygamy, which prevails in spite of express laws of the United States, in open outrage of every sacred family tie, controlling the social organization of the community, and shaming the sense of propriety so long and well established among all races of Europeans on this continent. No officer of the United States, civil or military, can hope to exert any salutary influence over this society while polygamy is allowed in defiance of his authority and against the law of the government he represents.



Polygamy must be abolished in all this Territory, or the power of this government will be held in contempt by every class of inhabitants. Through its influence a social ban is put on all Christian women who remain true to the laws and customs of their country and the precepts of their faith. Isolated from all other influences than their own peculiar customs and prejudices, the Mormon population are not amenable to the arguments usually applied to enlighten or reform mankind. A revelation from the seer or a strong inducement to migrate seem the only easy remedies. Polygamy is synonymous with bigamy. Bigamy is, under our law, a crime, and polygamy is a monstrous bigamy. Under the Mormon organization it seems to threaten to become incest. The intermarriage of the leading families has made the usual definitions fixing relationship very complex, if not impossible, under the laws of the United States. To the Mormon such definitions of polygamy and its developments are perhaps harsh, but your committee use only the definitions established among and by the people of the United States by common law and common decency. The instances of incest among the Mormons are taken from the printed works on the customs of that society, and your committee refer to them for the reliability of the statement. There seems to your committee, however, abundant proof of the licentious practices under the law regulating marriages in Utah to call for vigorous enforcement of the existing law of Congress on the subject of polygamy. A conflict between monogamy and polygamy has been inaugurated in defiance of our laws by the Mormons themselves.

It is proper, however, here to state that polygamy is an innovation upon the institution of matrimony as first practiced among the Mormons. The precise date of its appearance among them is not positively fixed, but is limited between the date of 1843-'44 and 1852-'53, according to different interpretations of Mormon revelation. A special revelation preceded and sanctified its introduction some time before it was openly indulged in by the leaders.

And this licentious custom of marriage or reckless abuse of that sacred rite is one of the most glaring and practical proofs of the aggressive and dangerous character of a system which grows at the will or in obedience to the lust of a political ruler styling himself a prophet. Toleration of religious views is a holy duty enforced on Congress by the Constitution, but no law does or can exist which permits toleration of a practice hostile to the safety of society. Such a practice may be introduced by the best and highest human authority, but whether under the name of prophet, priest, or king it matters not so long as the practice introduced be against established law of the land or fatal to the welfare of the state.

There are other practices under the hierarchy of Utah which militate, in the opinion of your committee, against the principles of good republican government. But the origin of all these existing evils, and the certain source of innumerable future evils in Utah, is in the prophetic power of the head of the society which rules there. The union of church and state, the combined sanctity of the voice of God and the will of the people, arm the chosen ruler of that organization with spiritual and temporal power.

Has that power been hostile to the government of the United States? Your committee believes that it is and has been hostile rather from the inherent spirit of its creation than from any design on the part of that people. New religious societies are naturally zealous and tend to fanaticism.

Fanaticism at first is always aggressive, then becomes exclusive, and



then seeks isolation. Such seems to have been exactly the course run by the Mormon society up to its establishing itself in the wilderness of Utah. In seeking to develop the germ of their religion the Mormons naturally ran against existing theories of faith, and imagined themselves persecuted. The character of martyr is the cheapest and best for proselyting among men yet discovered. And a little persistent opposition to established law and custom can always breed persecution. So far, therefore, as it was to the interest of the leaders of Mormonism to oppose this government, to strengthen and enrich themselves and secure the support of new converts, your committee think the organization has been antagonistic to the United States. But from no malice aforethought have they ever, as far as any proof has come to your committee, organized rebellion or sedition against the supreme authority of this Union, or committed treason by any overt act.

To remedy the evils which now exist in this Territory and to prevent them in the future, has been a matter of serious consideration for many years by this government, and a plan is now before the Committee on Territories in the Senate for radically changing the manner of carrying on the government of Utah.

The duties of your committee do not extend to the subject-matter of reform in the Territory further than to protect the purity of the representative system, and secure to every citizen of the United States the full enjoyment of his liberty at the polls.

Your committee believe that it is the imperative duty of Congress to enforce the laws by every means in the power of this government, to prevent undue influence of the hierarchy of the Mormon society over the people of that Territory.

A strong belief exists in the mind of your committee that to considerable extent such influence has been used in the recent elections for delegate to Congress from Utah, but sufficient proof of its illegality has not come to their knowledge to warrant, in their opinion, any direct interference by immediate action of Congress.

The vote polled, under whatever control it may have been deposited, is, in the opinion of your committee, in default of full and satisfactory evidence to the contrary, to be deemed and accepted as the legal vote of the people of Utah. Their minds may have been under religious or other prejudice, created or increased by the Mormon leaders in favor of one candidate and against the other, but there is no reason to conclude that the free exercise of the ballot by the citizen was unlawfully prevented by force or fraud. No sufficient proof to that effect has, in the opinion of your committee, been presented by the contestant. The committee therefore unanimously agree to present the following resolutions, to wit:

*Resolved*, That William McGrorty is not entitled to a seat in this House, as a delegate from the Territory of Utah.

*Resolved*, That William H. Hooper is entitled to a seat in this House, as a delegate from the Territory of Utah.

---

## APPENDIX.

The Territory of Utah, at the time it was first settled by the Mormons in 1846-'47, comprised the tract lying between latitude 37° and 42°, and was bounded on the west by the eastern base of the Sierra Nevada Mountains, on the east by the summit of the Rocky Mountains, and contained about 188,000 square miles.



The present boundary of Utah is as follows, on Keeler's Map of the Territory of the United States: North, along latitude 42°, by Idaho Territory; east, by Dakota and Colorado Territories; south, along 37° latitude, by Arizona; west, by Nevada.

The Central and Union Pacific railroad route runs through the northern part of this Territory, within about twenty-seven miles of Great Salt Lake City, and is to connect with that city by a side track, running nearly due south and about twenty-seven miles long.

#### POPULATION.

The difficulty of procuring accurate official information on this head, and the conflicting statements with regard to the exact population of Utah, make it difficult, if not impossible, for your committee to estimate correctly in this matter. The population is variously estimated to be from 42,000 up to 95,000, 25,000 of the 95,000 being in the city of Great Salt Lake. According to another construction of this last statement, there are 95,000 in the Territory and 25,000 in the city. Your committee deem it reasonable to estimate the population at about 100,000 in the whole Territory of Utah, as at present organized.

The census of 1860 shows that at that time the population numbered 40,273. This number has been reduced since that time, by the attaching of various settlements to the adjoining Territories of Nevada and Idaho, at least 10,000, and has been augmented by immigration by somewhat more than the same number, say 12,000. The natural increase of the resident population has been about balanced by the exodus of disaffected Mormons to California and the Atlantic States, and the migration of young unmarried men to the mines of Nevada, Idaho, and Montana.

This gives as the number of the population in the Territory in 1867, not counting transient persons, miners, and others, who remain a few days or weeks and pass on, 42,273. Of these at least 40,000 are Mormons.

In a pamphlet published in Utah city by Thomas D. Brown & Co., mining brokers, Great Salt Lake City, 1865, the Mormon population of Utah is stated to be 25,000 in the city, 95,000 in the Territory. Of the non-Mormon population no estimate or statement is given by the author of the pamphlet. Hon. Mr. Hooper, the sitting delegate, in a letter addressed to your committee, has furnished official tabular statements in regard to the population of Utah, which are, together with his letter, herewith presented to the House.

#### HISTORY.

In the year 1815, the father of Joseph Smith, jr., founder of Mormonism, moved with his family from Windsor, Vermont, to Palmyra, New York. Joseph, the Mormon, was ten years old when the family first settled at Palmyra.

About the year 1820, he had a kind of preparatory vision while he was in a retired place engaged in prayer, in which two glorious personages appeared to him, and informed him his sins were forgiven, and that he should have at some future time a revelation "of the true doctrine and fullness of the gospel."

1823, September 22, he had another vision. The next day he had another vision, instructing him to go and get the sacred writings on which the church of the Latter-day Saints was to be built up.

1827, September 22.—He was permitted to get possession of the plates on which the sacred writings were inscribed.



1829, May 15.—John the Baptist, of Christian history, appeared and laid hands on Smith and Oliver Cowdry, ordaining them into the Aaronic priesthood, and commanded them to baptize each other, which they accordingly did.

1830.—The Book of Mormon made its appearance. This is its contents, according to Parley P. Pratt, a Mormon apostle: "The Book of Mormon contains the history of the ancient inhabitants of America, who were a branch of the house of Israel, of the tribe of Joseph, of whom the Indians are still a remnant. \* \* \* One of the prophets, whose name was Mormon, saw fit to make an abridgment of their history, their prophecies, and their doctrines, which he engraved on plates, and afterwards being slain, the records fell into the hands of his son Moroni, who deposited them in the earth about the year 420, in a hill called Cumorah, in Ontario County, New York State."

1830, June 1.—At Fayette, county of Ontario, State of New York, Joseph Smith first organized his Church, consisting of thirty members. In the course of the same year the Church was moved to Kirtland, Ohio.

Now began the system of revelations by Smith. All the movements of this Church were regulated by the revelation from Smith, whether in sacred or secular matters.

1831.—In obedience to a revelation, (June, 1831,) Smith and his apostle, Sidney Rigdon, went from Kirtland to Jackson County, Missouri, and fixed on the spot where Independence now stands as the site of the great Mormon temple, and the gathering-place of the Latter-Day Saints.

1833, July 20.—The people of Missouri held a meeting at which they resolved on the expulsion of the Mormons.

July 23.—The Mormons entered into an agreement to leave Jackson County, and in 1833, November 30, they had all crossed the Missouri River into Clay County, Missouri, where they had a temporary refuge from popular violence.

1836, June 29.—A meeting of the citizens of Clay County was held at Liberty, Missouri, which compelled the Mormons to leave that county. They subsequently gathered in Caldwell County, founding the city of the "Far West," and other smaller places. The popular storm, however, drove them from the State of Missouri. Smith, accompanied by a chosen band of one hundred young men, secretly armed, had visited Illinois in 1834 for the purpose of selecting a new home for his people.

1838, November 10.—The governor of Missouri ordered the military to act with vigor against the Mormons, and force them to leave Missouri. Smith was arrested and thrown into prison, where he remained until 1839, in the spring.

1839.—The Mormons having settled themselves upon a bend of the Mississippi, in the county of Hancock, in the State of Illinois, where the village of Commerce had been laid out, established the city of Nauvoo.

1841.—A new revelation from Smith appointed Nauvoo one of the stakes of Zion, and ordered a temple to be built.

1842.—At this period, the Mormons were estimated in the United States and Great Britain to number about 150,000, and were on the increase. A formidable band of 4,000 men was armed and equipped, and organized into the Nauvoo Legion. These were the palmy days of Mormonism. Polygamy had not yet been revealed, or put in practice.

1843, July 12.—A new revelation enjoined polygamy on the saints, or rather permitted them to indulge in it.

1844, February 15.—Smith became a leading politician, and was duly put forth as a candidate for the presidency by the "Times and Seasons" newspaper at Nauvoo.



1844, May 6.—F. M. Higbee, practicing polygamy, being cut off from the Church of Latter-Day Saints, sued Joseph Smith, senior, before the municipal court of Nauvoo, and in support of the proceedings the prophet and others were sworn as witnesses, disclosing a very corrupt condition of morals at Nauvoo. At this time spiritual wifery was directly charged on some of the elders of the Mormon Church. Great popular indignation followed these disclosures. A collision between Mormonism and the people of Illinois was inevitable.

1844, June 21.—The governor of Illinois proposed to the Smiths that they should surrender themselves as prisoners to the State authorities, upon a pledge of safety from personal violence from the mob. This agreement was made, but not fairly kept by the State authorities; for on the 27th of June the prisoners were assailed by an armed mob, and murdered, at 6 in the evening, in jail.

1844, August 15.—Brigham Young, president of the Twelve Apostles, issued, with others, an address to pacify the Mormons, and succeeded.

1844, October 7.—Brigham Young was declared successor to Joseph Smith, the prophet, under the name of Seer. At this date Nauvoo is reported, by the *Times and Seasons*, to have contained a population of 14,000, nine-tenths of whom were Mormons.

1846, January.—A plan of removal from Nauvoo to the Pacific coast became a fixed idea in the Mormon mind. Young manifested much ability and forecast in his arrangements to remove a population of 15,000 souls to a new home beyond the Rocky Mountains.

The pioneer band of the Mormons reached Great Salt Lake Valley, the new Mormon Zion, 4,000 strong, July, 1847, and laid the foundation of Great Salt Lake City.

1848.—Nearly all the Mormon inhabitants of Nauvoo and neighborhood reached Great Salt Lake.

1849.—Public works, internal improvements, the perpetual emigrating fund, and the tithing office, were established about this time.

The end of the Mexican war recruited the Mormon capital with the members of a battalion of that organization which had marched to Mexico under the United States flag.

Young now began to establish an independent State, called the State of Deseret, under a constitution, with the following boundaries: "Commencing at 33° north latitude, where it crosses the 108° longitude, west of Greenwich; thence running south and west to the northern boundary of Mexico; thence west to and down the main channel of the Gila River, on the northern line of Mexico and on the northern boundary of Lower California to the Pacific Ocean; thence along the coast northwesterly to 118° 30' west longitude; thence north to where said line intersects the dividing ridge of the Sierra Nevada Mountains; thence north along the summit of the Sierra Nevada Mountains to the dividing range of mountains that separates the waters flowing into the Columbia River from the waters running into the Great Basin; thence easterly along the dividing range of mountains that separates said waters flowing into the Columbia River on the north, from the waters flowing into the Great Basin on the south, to the summit of the Wind River chain of mountains; thence southeast (s. e.) and south by the dividing range of mountains that separates the waters flowing into the Gulf of Mexico from the waters flowing into the Gulf of California to the place of beginning;" as set forth in a map drawn by Charles Preuss, and published by order of the United States Senate, 1848.

In 1850 the Territory of Utah was first organized, under an act of



Congress, and soon after Brigham Young was appointed governor by the President.

1851.—The legislative assembly was elected under the territorial bill, and held its first session the following fall and winter, and from this period the laws of the United States have been nominally in operation. What the reality is in this respect will appear more fully on further investigation.

1853, January 3.—The following provision regulating elections was passed by the territorial legislature of Utah :

SEC. 5. Each elector shall provide himself with a vote, containing the names of the persons he wishes elected, and the offices he would have them to fill, and present it, neatly folded, to the judge of the election, who shall number and deposit it in the ballot-box. The clerk shall then write the name of the elector, and opposite it the number of his vote.

SEC. 6. At the close of the election the judge shall seal up the ballot-box and the list of the names of the electors and transmit the same without delay to the county clerk.

By this ingenious contrivance it is known whom each elector votes for, and the dangers of a free exercise of the rights of suffrage by secret ballot averted. It reduces the ballot to a *viva voce* vote. A similar practice existed in colonial times in Rhode Island as to indorsing the ballot; and the present method of *viva voce* in Kentucky is practically the same, and was the custom formerly in Virginia.

On the 10th of January, 1867, the following act, passed by the legislative assembly of the Territory, became a law by receiving the approval of the governor:

AN ACT to provide for the election of a delegate to the House of Representatives of the United States.

SECTION 1. *Be it enacted by the governor and legislative assembly of the Territory of Utah:* That an election shall be held on the first Monday of February, 1867, at the usual places of holding elections in the several counties of the Territory, for the election of a delegate to the House of Representatives for the fortieth Congress. The election shall be held, conducted, and returns thereof made, agreeable to "An act regulating elections," approved January 3, 1853. The delegate for the forty-first Congress shall be elected at the general election on the first Monday of August, 1868, and biennially thereafter.

SEC. 2. This act shall be in force from and after the passage thereof.

Approved January 10, 1867.

*This is the first act ever passed by the legislative assembly specifically providing for the election of a delegate to Congress from Utah Territory, and prescribing the times, places, and manner of holding the elections, as required by the organic act.*

For nearly seventeen years the people of the United States have been paying mileage and compensation to delegates from Utah.

In conformity with the foregoing enactment, an election was held in the various counties on the 4th day of February, 1867.

1852.—The Danites, or secret police of the Mormon society, established by Smith by divine revelation, afforded an illustration of the local police in Utah in the following manner, (see Ferris's *Utah and the Mormons*, p. 191 :) Two men by the name of Hickman and Hatch, members of the Danite band, were noted for robberies and violence. Hatch, for some reason, determined to leave the valley, and became a suspected person. These men were one day together on horseback. Hatch plunged into a creek to cross over, and was shot from behind. Hickman immediately turned his horse, fled to the city, and reported that they (Hatch and himself) had been attacked by Indians and his companion killed. Hatch, however, had strength enough to make his way back to the city, and stated that he had been shot by Hickman. On a subsequent visit



from Hickman, Hatch and his family contradicted Hatch's first statement, and remained silent when questioned on the subject, until at the last moment, when dying, Hatch told his physician that the shot was fired by Hickman. The latter attended the funeral, and while officiously engaged in duties of an undertaker, the father of Hatch aimed a violent blow at Hickman. Public opinion was strong in the belief that the younger Hatch had been killed by Hickman; but no investigation by the authorities had been made. Hickman was still at large at the writing of the above by Mr. Ferris.

Other flagrant instances of the reckless disregard of life and utter neglect of law in prosecution of notorious criminals are recited by reliable authors who have visited and resided in Utah within the last ten years. Among the instances which seem worthy of notice in the appendix to this report are the following facts :

*Facts communicated in accompanying letter by Judge Titus, formerly United States district judge in Utah Territory, with annexed copy of a military order, as then within his knowledge and belief, and referring to the condition of society in Utah, but particularly to the killing of certain teamsters by order of Brigham Young, through the Mormon General Wells.*

[Special Order.]

SALT LAKE CITY, April 9, 1858.

The officer in command of escort is hereby ordered to see that every man is well prepared with ammunition, and have it ready at the time you see those teamsters a hundred miles from the settlements. President Young advises that they should be all killed, to prevent them returning to Bridger to join our enemies. Every precaution should be taken, and see that no one escapes. Secrecy is required.

By order of General Daniel H. Wells.

JAMES FERGUSON,  
*Assistant Adjutant General.*

The whole of the above special order is visible, but the names of the officials to its handwriting and genuineness are covered by me.

JOHN TITUS.

---

*Copy of a letter of John Titus to Hon. John W. Chanler.*

WASHINGTON, March 19, 1868.

MY DEAR SIR: Allow me thus to communicate to you the subjoined facts, which was mainly the object of my call this morning.

By letter of May 6th from the Hon. Thomas J. Drake, the only judge now in commission for Utah, I learn that on complaint of General Clappitt, postal agent for the United States, two men were arrested for robbing the mail in Echo Cañon, some miles from Great Salt Lake City, and on hearing were ordered to be committed in default of bail for the offense. General Robert T. Burton, of Great Salt Lake City, sheriff of that county, would not allow those men to be received for custody in the jail of that precinct, nor in the Utah penitentiary adjacent. They were, therefore, sent, as the only practicable alternative, to Camp Douglas for safe-keeping.

The cause of this was hostility to the federal government, and the wish to embarrass its officers by the Mormon leaders, of whom Burton is one, and hatred to Judge Drake for his fearless devotion to his duty. The fact that this man Burton is a United States officer, collector of internal revenue, makes the case no better.

The Utah penitentiary was built by moneys appropriated by the United States, has been more than once repaired by similar means, and is now, with the Indians, right or wrong, made the pretext for annual money-calls on the federal government. Heretofore the United States has paid the Mormons liberally in every case for the custody of offenders against its laws. I sent you through Judge Waite the report of evidence elicited in the case of 11 men charged with murder before me, and ordered to be committed in the Utah penitentiary, who are allowed to go, and still are, at large. These men, however, are Mormons, and some of them closely related to their leaders.

I present you this case as illustrative of Mormon hostility to the federal government, and of its disposition to embarrass the federal authorities there in the performance of their duty. It is perhaps quite worthy of mention in your coming report, and constitutes, it is submitted, good cause for withholding the annual legislative appropria-



tions for Utah. This refusal, though apparently individual, is the authorized act of the Mormon organization, religious and secular, of whose existence and operations you have already some evidence before you.

Yours, very respectfully,

JOHN TITUS.

Hon. JOHN W. CHANLER.

Herewith is also presented a copy of a report in full of Brevet Brigadier General Carleton in regard to the Mountain Meadow massacre, reference to which has been made in contestant's argument before your committee, and a report of which is to be found in Ex. Doc. No. 42, 36th Congress, 1st session, being message of President Buchanan, May, 1860, made in compliance with a resolution of the Senate, in which the Indians are reported, on page 96, said Ex. Doc. No. 42, to have acknowledged to Garland Hunt, Indian agent, that they participated in the massacre under the instigation of the Mormons; also on page 120, same Ex. Doc., Thomas Wright and William Jones depose to having seen several wagons, property of the emigrants who were massacred at Mountain Meadow; that representations were made to them by certain persons that the Lander's road, on which the Miltimore train had been massacred, was the best way to California; that said representations were false, and intended to deceive emigrants and get them to be plundered and robbed; that on this road the deponents saw a party of from twenty to thirty persons, either Indians or in the disguise of Indians; they then and yet believed them to be whites in disguise. Five or six of them had long, heavy beards, and three of them had yellow hair. None of them had long, coarse, black hair like the Indians. They spoke our language as well as any American speaks it. They knew the value of powder, lead, caps, and guns as well as deponents did, as well as the cost of such things in the States. They also purchased some things of the deponent's party and paid for them in American gold coin. This was in August, 1859. (See Carleton's report.)

#### JUDICIARY.

Your committee hereto annex a statement of facts, brought before them during the examination of this case, relative to the condition of the judiciary in Utah Territory since its organization:

The most conclusive evidence of the character of the Mormons is the manner in which they have treated the federal judiciary, almost without exception, and the obstacles they have thrown in the way of the administration of justice.

There have been five chief justices in Utah, and something more than a corresponding number of associates; in all, seventeen judges, saying nothing of many who never went into the Territory. Of these seventeen, all have had difficulty with the Mormon leaders but four, Reed, Kinney, Shaver, and Snow, and of these Snow was a Mormon.

Perry E. Brocchus, one of the first associate justices, was appointed from the State of Alabama. He arrived in Utah in the summer of 1851.

On Monday, the 8th of September, 1851, the judge, by special request from Brigham Young, attended the general conference of the Mormon Church, then being held in Great Salt Lake City. After the opening ceremonies, Mr. Young introduced Judge Brocchus, who made some remarks, touching, among other things, upon polygamy.

His remarks upon that subject gave great offense to Young, who turned upon him fiercely, and said: "I will kick you or any other Gentile judge from this stand, if you or they again attempt to interfere with the affairs of our Zion."

What Judge Brocchus said is not reported. He himself says, in a letter subsequently published, "My sole design in the branch of my remarks which seems to be the source of offense was to vindicate the government of the United States from those feelings of prejudice and that spirit of defection which seemed to pervade the public sentiment."

The real key of the conduct of Young may be found in the fact that the remarks of the judge struck at the foundation of his political power; hence he "administered," as he afterward said, "a severe rebuke." This audacious attack upon one of the judiciary justly caused much indignation at the time, and resulted in nearly every federal



officer leaving the Territory. This was the commencement of the difficulties with the judiciary.

In February, 1856, a mob of armed Mormons, instigated by sermons from the heads of the church, broke into the court-room, and at the point of the bowie-knife compelled Judge Drummond to adjourn his court *sine die*. Soon afterward all the United States officers, with the exception of the Indian agent, were forced to flee from the Territory. (New American Cyclopaedia, Dana & Ripley, vol. 11, page 740.)

Drummond was succeeded by Hon. John Cradelbaugh, afterward delegate in Congress from the Territory of Nevada.

Judges Eckles, Cradelbaugh, and Sinclair arrived and entered upon their duties in the summer of 1858. In the spring of 1859, Judge Cradelbaugh, having been assigned to the southern district, made a vigorous effort to bring to justice and to punishment those engaged in the Mountain Meadow massacre, the crime having been committed within his district. The effort was worthy of all commendation, but resulted in a signal failure.

The nature of the difficulties encountered may be best understood from the following remarks of Judge Cradelbaugh to the grand jury when discharging them:

"This day makes two weeks from the time you were impaneled. At that time the court was very particular to impress upon your minds the fact that it was desirable to expedite business as speedily as possible. The court took occasion to call your attention to the difficulties under which we had to labor. It told you of the condition of the legislation; it told you of the fact that the legislature had not provided proper means to aid the court in bringing criminals to punishment; it told you that, aside from that, the legislation was of such a character as to embarrass the court in the discharge of its duties; and that they had given criminal jurisdiction to courts of their own creation.

"The court also called your attention to the fact that there had been, in connection with this legislation, an attempt by persons within the Territory to bring the United States courts into disrepute with this people. It particularly called your attention to the fact that Brigham Young, the late executive of the Territory, at the time when he was a sworn officer of the government—sworn to see that the laws were executed—had taken occasion to denounce the courts as vile and corrupt; also, that he had taken occasion to denounce all attorneys and jurors of the court, and that this was done to prevent the proper and due administration of justice in the Territory.

"Aside from this, the court took the unusual course of calling your attention to particular crimes—the horrible massacre at the Mountain Meadows. It told you of the murder of young Jones and his mother, and of pulling their house down over them and making that their tomb; it told you of the murder of the Parrishes, and Potter, and Forbes, almost within sight of this court-house. It took occasion to call names for the purpose of calling your particular attention to those crimes; the fact that they have been committed is notorious.

"The court has had occasion to issue bench warrants to arrest persons connected with the Parrish murder; has had them brought before it and examined; the testimony presents an unparalleled condition of affairs. It seems that the whole community were engaged in committing that crime. Facts go to show it. There seems to be a combined effort on the part of the community to screen the murderers from the punishment due them for the murder they have committed.

"I might call your attention to the fact that when officers seek to arrest persons accused of crimes they are not able to do so; the parties are screened and secreted by the community. Scarcely had the officers arrived in sight of the town of Springville, before a trumpet was sounded from the walls around the town. This, no doubt, was for the purpose of giving the alarm. The officers were there to make arrests. The officers leave the town, and in a short time a trumpet sounds again from the wall for the purpose of announcing that the danger was over. Witnesses are screened; others are intimidated by persons in that community.

"An officer of this court goes to Springville, meets the bishop of the town, asks him about a certain man, for whom he has a writ, he having understood that the man was a scribe in his office. He (the bishop) tells him that he has gone to Camp Floyd, while the fact is, the person the officer desires to find is at the time in sight in the street. We have here a bishop lying to prevent the service of the process of this court, and aiding in preventing criminals being brought to punishment.

"Such are the attempts made to prevent the administration of justice in the courts.

"Such acts and conduct go to show that the community there do not desire to have criminals punished; it shows that the Parrishes and Potter were murdered by counsel; that it was done by authority; the testimony goes to show that the persons engaged in committing these murders are officers in that community, policemen, and that they have since been promoted for committing these hellish crimes.

"At the commencement of this term of court these persons were to be seen elbowing about the streets with the bishops and other dignitaries, but now they are not to be found.



"You have had sufficient time to examine those cases; more than two days ago you had all the testimony before you in the Parrish case, and for some cause you refuse to do anything."

"Your duty is to find bills when there is sufficient testimony to satisfy you of the probability of the party's guilt. The court has been patient with you; it has given you time; it has endeavored to be patient, that you might have ample opportunity to do your duty."

"By legislation we have no jails, no means to support prisoners, no means of paying witnesses, or jurors, or other officers of this court. It would seem that the whole of the legislation of this Territory was to prevent the due administration of justice."

"The court feels that it has discharged its duty; it has furnished you every facility for discharging yours. Still, you make no report. To continue you longer in service would be wrong: the public interest would neither be promoted nor benefited by it."

"You are therefore discharged from further service."

¶ The grand jury was discharged on the 21st of March and two weeks afterward, on the 4th of April, the judge adjourned his court, causing the following final entry to be made upon the records:

"This court has sought diligently and faithfully to do its duty, to administer the laws of the United States and of this Territory. It could not have any other object. But at every turn it has had to encounter difficulties and embarrassments. Men high in authority in the Mormon Church, as well as men holding civil authority under the territorial government, seem to have conspired to obstruct the course of public justice and to cripple the earnest efforts of the court."

"The whole community presents a united and organized opposition to the proper administration of justice; every art and every expedient have been employed to cover up and conceal crimes committed by Mormons. Witnesses have been prevented by threats of violence from obeying the summons of this court; others that have testified have been driven to seek safety in the protection of the United States troops stationed near here, who, it is proper to say, are here on the requisition of the court, and for whose presence the court is responsible. The absolute necessity of having these troops here has been fully demonstrated by all that has transpired during the session of this court."

"To crown all, the grand jury, sworn to perform a high public duty, has lent itself as a willing instrument to this organized opposition to the laws of the country, and refused to meet its obligations."

"A most willing inclination has been manifested to prosecute Indians and other persons, not Mormons, for their offenses, while Mormon murderers and thieves are allowed to go unpunished."

"This court determined, as its action manifests, that it did not intend to be used by this community for its protection alone, but that it will do justice to all, or it will do nothing."

"Not being able to do this, the court now adjourns without day."

"JOHN CRADELBAUGH,

*"Associate Justice Supreme Court, ex officio Judge Second Jud. Dist."*

"A true copy:

"LUCIUS N. SCOVIL, Clerk."

Thus ended the first and last attempt to punish those who had committed the atrocious murders of 1856 and 1857 in Southern Utah.

Judge Cradelbaugh was succeeded by Crosby, and he by the present fearless officer, Judge Thomas J. Drake.

The history of these judges would be but repeated, by following the line of their associates, with the single exception of the first, Judge Snow, a prominent Mormon. Judge Stiles had his office plundered, and, as he supposed, the public records destroyed, though it appeared afterward they had only been hidden. Judge Sinclair and his successors have all met with denunciation and abuse in the discharge of their duty.

In March, 1863, a large public meeting was held in Salt Lake City, inflammatory speeches were made, and resolutions were passed unanimously appointing a committee to wait upon the governor and two of the judges, and request them to resign and leave the Territory. And what was their offense? Taking such steps as in their judgment were necessary for the enforcement of the laws.

The chief justices, with the exception of Reed and Kinney, have been equally unfortunate. Bradenburg, Eckles, and Titus, all have met with the same difficulties, and the disgraceful history of the Territory, in connection with the attempts of the federal judiciary to sustain the authority of the general government and enforce the laws, has found a fitting climax in the sending of a shroud to the late bold and faithful chief-justice, with a notification for him to leave the Territory.

Not only by opposition to, and abuse of, the federal judges, but by every other means in their power, is the administration of the laws prevented, extending even to the direct interference with jurors in the performance of their duty.



"If," says the editor of the *Deseret News*, "a court is known to trample upon our laws, by which alone our courts exist, and that court summons you to serve on a grand jury, inform the officer that a court which rules out the law by which it is constituted a court has no existence, and you cannot attend the sitting of a nonentity. If summoned to serve on a traverse jury, and the above plea does not suit you, and you do not wish to undergo the pillory of the jury-box, *it is the most easy job in the world to form an opinion and express it.*" *Deseret News* of February 27, 1860.

A few days after this editorial had appeared, Jedediah M. Grant, one of the "presidents" of the church, used this language in a discourse at the tabernacle in Salt Lake City:

"Last Sunday the president chastised some of the apostles and bishops who were on the grand jury. Did he fully succeed in clearing away the fog which surrounds them, and in removing blindness from their eyes? No; for they could go to their room and again disagree; though to their credit it must be admitted that a brief explanation made them unanimous in their action.

"Not long ago I heard that, in a certain case, the traverse jury were eleven against one, and, what is more singular, the one alone was right in his views of the case.

"Several had got into the fog, to suck and eat the filth of a Gentile law court—ostensibly a court of Utah, though I call it a Gentile court." (Remarks of J. M. Grant, March 2, 1856.<sup>1</sup> *Jour. of Dis.*, vol. iii, p. 233.)

The teachings of Young are to the same effect. His sermons are full of bitter denunciations of the courts and juries, and he "counsels" his hearers to keep away from the court-house, and to keep out of the jury box. (See *Journals of Discourses*, vol. iii, p. 241.) On one occasion he sent a number of the jurors on missions, for violating his instructions to them as jurors. (*Deseret News*, vol. v, p. 412.)

In the spring of 1863, when Brigham Young feared arrest for violating the anti-polygamy law of Congress, he voluntarily gave bond before Chief Justice Kinney for his appearance before the next grand jury, to answer to any indictment which might be found against him. The grand jury refused to find a bill, though his violation of the law had been open and notorious.

The following will show the animus of the Mormon leaders, exhibited during the late war:

"The preparations that are being made for war indicate, with much certainty, that it is the intention of the opposing factions to resist each other, even to the shedding of blood." (*Deseret News*, April 17, 1861.)

In the *Deseret News* of April 24, 1861, the editor spoke of "the state once constituting the American Union," and "the government of the United States that was."

There are two classes of murders which are justified and defended:

The one is the killing of their enemies, upon general principles, which Kimball and Young sanction in their "pulpit."

The other is the killing of those who apostatize from the Church, for the salvation of their souls.

This doctrine of "blood atonement," familiar to all residents of Utah, is thus explained and enforced by Young.

"There are sins that men commit for which they cannot receive forgiveness in this world or in that which is to come; and if they had their eyes opened to see their true condition they would be perfectly willing to have their blood spilled upon the ground, that the smoke thereof might ascend to Heaven as an offering for their sins, and the smoking incense would atone for their sins; whereas, if such is not the case, they will stick to them and remain with them in the spirit world.

"I know when you hear my brethren telling about cutting people off from the earth, that you consider it is strong doctrine; but it is to save them, not to destroy them. \* \* \* \* \*

"I do know that there are sins committed of such a nature that, if the people did understand the doctrine of salvation, they would tremble because of their situation. And, furthermore, I know that there are transgressors who, if they knew themselves, and the only condition upon which they can obtain forgiveness, would beg of their brethren to shed their blood, that the smoke thereof might ascend to God as an offering to appease the wrath that is kindled against them, and that the law might have its course. I will say, further, I have had men to come to me, and offer their lives to atone for their sins.

"It is true that the blood of the Son of God was shed for sins through the fall, and those committed by men, yet man can commit sins which it can never remit. As it was in ancient days, so it is in our day; and though the principles are taught publicly from this stand, still the people do not understand them; yet the law is precisely the same. There are sins that can be atoned for by an offering upon an altar, as in ancient days; and there are sins that the blood of a lamb, of a calf, or of turtle doves cannot remit, but they *must be atoned for by the blood of the man.*" (Discourse by President Brigham Young, delivered in the Bowery, Great Salt Lake City, September 21, 1856; *Journals of Discourses*, vol. iv, pp. 53, 54.)



President J. M. Grant said: "There are men and women that I would advise to go to the president immediately, and ask him to appoint a committee to attend to their case; and then let a place be selected, and let that committee shed their blood. \* \*

"I would ask how many covenant-breakers there are in this city and in this kingdom? I believe that there are a great many; and if they are covenant-breakers, we need a place designated where we can shed their blood." (Remarks by President J. M. Grant, delivered at the Bowery, Great Salt Lake City, September 21, 1856; Journals of Discourses, vol. iv, pp. 49, 50.)

In another discourse, referring to the killing of covenant-breakers or apostates, he says that many will pray to the Lord to do that which they are ashamed to do themselves, and wants to know if they want the Lord to come down and do their dirty work. (Discourse of President J. M. Grant, March 12, 1854; House Rep. 39th Congress, 1st session, No. 96, p. 12.)

The history of the Territory exhibits numerous instances of murders committed under the sanction of these doctrines, both of their Gentile enemies and of apostates.

Of the former class, authorized by the teachings of Young and Kimball, the committee is referred to the killing of the Aikin party, consisting of six persons, on their way from California to Fort Bridger, in the fall of 1857, the last two being shot in cold blood, while under the protection of the Mormons; (this was shown by the testimony of a witness named Alice Lamb;) the killing, during the same year, of Yates, a mountaineer, in Echo Cañon; of Franklin McNeil, who had sued Brigham Young for false imprisonment, and was shot in his own door the day preceding the time appointed for trial;) the Mountain Meadow massacre, in September of the same year. During the year 1858, the killing of Sergeant Pike, in Salt Lake City, while in the custody of the United States marshal; the shooting of Arnold and Drown, at the house of a friend, in Salt Lake City, (Drown had obtained a judgment in the court against Hickman, a leading Danite;) the murder of two Irishmen, teamsters, the same year. In the year 1859, the killing of Price, a wagon-master in the army, at Fairfield, by Rice, who fled to Salt Lake City; the killing, at Salt Lake City, of Vincent, who had lately come from Pike's Peak, and was found stretched across one of the ditches, shot through the head, (his murderer never discovered. In the year 1860, the killing of a private soldier named William Bryan, at Fairfield, by a man called "Gus," who, on the second evening after the murder, was seen in Salt Lake City, but was never arrested; the murder, on the plains, of Almon W. Babbitt, secretary of the Territory, in the fall of 1856, (he had had a bitter quarrel with Brigham Young;) the killing, April 2, 1865, of Squire Newton Brassfield, a highly respected citizen of Austin, Nevada, who was shot down in the streets while in the company of the United States marshal; and the assassination, on the 22d of October, 1866, of Dr. J. K. Robinson, who had become involved in litigation with the authorities of Salt Lake City.

In no one of these cases, so far as I am aware, were the murderers ever brought to justice.

The massacre of Lieutenant Gunnison and his party was, also, in the belief of many, committed by Mormons; and the reasons of this belief were, that they were shot with bullets, while the Indians in that section of country used bow and arrows; that they were not scalped, and the field-notes of the surveys were carried away from the scene of slaughter. Mr. Bernheisel, delegate in Congress, wrote a letter denying the charge, but made no attempt to explain these suspicious circumstances.

Of the other class, the killing of apostates, sanctioned by the teachings of Young and Grant, I refer to the murder of the Parishes and Potter, in 1857, at Springville; of Forbes and of Jones and his mother, and of the deaf and dumb boy, Andrew Bernard, in 1858; the murder by a Mormon bishop of one of his wives, during the winter of 1858-'59; the killing of the new prophet, Joseph Morris, with Banks and four women of his followers, who, having resisted those seeking to arrest them, were shot in cold blood, after surrendering, June 13, 1862; the killing of negro Tom, a Mormon, in the fall of 1866, who was found in the outskirts of the city with his throat cut from ear to ear; and the murder on the 3d day of August, 1867, of Isaac Potter and Charles Wilson, at Coalville. This Potter was a brother of the two who were put to death in 1857. He had been pursued with implacable vengeance. More than forty criminal charges had been brought against him in the courts, from all of which he had been honorably acquitted. On the 2d of August last he was arrested with Charles Wilson and John Walker, charged with stealing a cow, and confined in the jail at Coalville. Toward the succeeding midnight they were all taken from their place of custody by sixteen armed men, Potter and Wilson shot dead and Walker wounded. Potter's body was perforated by a number of bullets and his throat cut.

None of the perpetrators of these crimes have been brought to justice. In the last case referred to, the men who committed the crime were arraigned before Chief Justice Titus, and committed to prison for trial, in October, 1867. They were permitted by the Mormon territorial marshal to escape, without any effort to retain them, and subsequently published an insolent and threatening letter to Judge Titus, in the Telegraph and Deseret News. At the same time a series of editorial articles appeared in those



papers abusing the federal judicial officers in Utah, warning the chief justice to leave, and menacing him with death if he remained.

Such has been the course pursued by the Mormon priesthood toward the federal executives, the judges and the juries, and toward the people and government of this country.

The following statements, laid before Congress at different periods and under different administrations, will give to the House a ground of opinion as to the character and form of government existing in the Territory of Utah.

The first eight years after the organization of the Territory, from 1850 to 1858, Brigham Young was governor.

In 1858 Governor Cumming was appointed, and a serious quarrel arose between him and the commander of the United States troops and federal judiciary in the Territory. This quarrel lasted three years. Mr. Kane was sent as a special commissioner to arrange the existing difficulty, and an outbreak was prevented. But Judge Cradlebaugh was removed by the government of the United States, and General Johnston, with his command, ordered to another post.

Cumming resigned, leaving the power again in the hands of Young, who held it till the arrival of Dawson, in the winter of 1861-'62. Dawson was soon driven from the Territory, and again Young held control till the arrival of Harding, in July, 1862. He was removed. Doty succeeded, and to him the present executive, Governor Durkee, who is carrying out the mild policy of his predecessor, in accordance with what was supposed to be the wishes of the government. That policy is "to let Brigham Young alone." That is all that he asks. It is all that Jefferson Davis ever asked. But while Brigham Young is being let alone, what becomes of the rights of American citizens in Utah? Let the murdered Brassfield and Robinson answer. What becomes of the execution of the laws? You will find the answer in the harems springing up all over that Territory in open violation of the act of Congress of 1862. The laws of the United States are openly derided and defied; every attempt to enforce them is laughed to scorn, and red-handed murderers go unwhipped of justice.

In accordance with these views are the conclusions of the different departments of the government, and of the various congressional committees who have had occasion to examine into the affairs of the Territory since its occupation by the Mormons.

The Secretary of War, in his report of December, 1857, says:

"The Territory of Utah is peopled almost exclusively by the religious sect known as Mormons. \* \* \* They have substituted for the laws of the land a theocracy, having for its head an individual whom they profess to believe a prophet of God.

"This prophet demands obedience, and receives it implicitly from his people, in virtue of what he assures them to be authority derived from revelations received by him from Heaven. Whenever he finds it convenient to exercise any special command, these opportune revelations of a higher law come to his aid. From his decrees there is no appeal; against his will there is no resistance. \* \* \*

"From the first hour they fixed themselves in that remote and almost inaccessible region of our territory, from which they are now sending defiance to the sovereign power, their whole plan has been to prepare for a successful secession from the authority of the United States, and a permanent establishment of their own."

On the 13th of February, 1863, Senator Wade, in a report submitted to the Senate, in reference to Utah affairs, used the following language:

"The customs which have prevailed in all our Territories in the government of public affairs have had but little toleration in the Territory of Utah; but in their stead there appears to be, overriding all other influences, a sort of Jewish theocracy, graduated to the condition of that Territory.

"This theocracy, having a supreme head who governs and guides every affair of importance in the church, and practically in the Territory, is the only real power acknowledged here, and to the extension of whose interests every person in the Territory must directly or indirectly conduce. \* \* \*

"We have here the first exhibition, within the limits of the United States, of a church ruling the state." (37th Congress, 3d session, Rep. Com. No. 87.)

In January, 1866, certain resolutions were referred to the Committee on Territories of the House of Representatives, instructing them to "inquire and ascertain what means, civil or military, might lawfully be resorted to to effectually eradicate the evil of polygamy from the land, what legislation was needed for that purpose, and why the law against polygamy was not enforced;" also a resolution instructing the same committee to inquire into the expediency of reporting a bill providing for the repeal of the law organizing the Territory of Utah, and for dividing said Territory, and attaching a portion thereof to the State of Nevada, and the residue to the Territories contiguous to Utah.

That committee, through Hon. J. M. Ashley, chairman, reported, July 23, 1866, that they were unable to agree upon any plan which seemed to them to promise a practical



solution of the abuses and evils complained of, and which were admitted to exist. They postponed the further consideration of the matter, and reported the testimony.

The committee state that "the testimony discloses the fact that the laws of the United States are openly and defiantly violated throughout the Territory, and that an armed force is necessary to preserve the peace and give security to the lives and property of citizens of the United States residing therein." (39th Congress, 1st session, H. Rep. No. 96.)

By an examination of this testimony it will further appear that the nationality of the Mormon people is mostly English, Swedish, and Danish, (testimony of Joseph H. Nevitt, page 3, and D. B. Stover, page 27;) that they have emigrated directly from those countries to Utah, without remaining long enough in the United States to become acquainted with our system of government; that consequently they are easily led to place implicit confidence in the teachings and government of Brigham Young and the leading men of the Mormon church, the substance of which during the three years last past (1863 to 1866) had been, that the government of the United States was to be broken up, and that no power in heaven or on earth could prevent it; that the North and the South would continue the war until nearly all the people were destroyed, &c., (testimony of Captain Stover, page 27;) that the Mormon system in Utah teaches disloyalty and treason to the government; that they have a State government in operation, which they call the government of the State of Deseret; that it has been organized many years; that they have a governor, lieutenant governor, and other officers and members of the legislature; that Brigham Young is governor and Heber C. Kimball lieutenant governor; that they hold a session of the Deseret legislature annually, immediately succeeding that of the territorial legislature; that they receive a message from the governor, Brigham Young, and that in this legislation they use the building, furniture, and fuel provided by the federal government for the territorial legislature. (Testimony of General P. Ed. Connor, pages 10 and 11.)

From the same report it further appeared that the "Gentiles," so called, in Utah, are virtually disfranchised and excluded from participation in the government; (testimony of General Connor, page 13;) that Brigham assumes to dictate in everything; that to oppose the nominee of Brigham is to disobey counsel, and expose one's self to the terrors of the church; that all authority in the Mormon church resolves itself into the will of Brigham; that his will is the absolute law of the faithful. That the grand idea ever kept before the people is that Brigham's will is higher than the Constitution, higher than any human law, of more binding obligation even than the Christian revelation. (Testimony of Norman McCloud, page 15.)

That it is publicly proclaimed by the Mormon leaders in Utah Territory that "nothing in the shape of a free government could ever stand on North American soil that was opposed to Mormonism and polygamy." (Testimony of Norman McCloud, page 19.)

#### POLYGAMY.

In regard to the introduction of polygamy among the inhabitants of Utah, there is a division of opinion; some state that it was already a fixed practice in Nauvoo among the Mormons under revelation from Smith in 1843-'44; others maintain that this practice was first introduced by Brigham Young and his colleagues, in 1852, at the Great Salt Lake City. The following statement on this subject, presented in argument of counsel for contestant before your committee, seems worthy of the notice of the House:

The first settlers in Utah were nearly all from England, Wales, and the United States, and of course carried the common law with them. They could not release themselves from its provisions if they would. Nor did they then attempt to do so. In the years 1847 and 1848, when the first settlements were made in Utah, no one sought to establish polygamy as a social institution of the Territory. Its practice had been charged upon Smith and other leaders in the church, but it had been uniformly and persistently denied, both in this country and in Europe, by all their speakers and writers.

On the 20th day of August, 1852, Elder Orson Pratt rose in the rostrum of the Tabernacle, at Salt Lake City, and commenced a discourse in the following language:

"It is quite unexpected to me, brethren and sisters, to be called upon to address you this forenoon; and still more so, to address you upon the principle which has been named, namely, a plurality of wives.

"*It is rather new ground for me; that is, I have not been in the habit of publicly speaking upon this subject; and it is rather new ground to the inhabitants of the United States, and not only to them, but to a portion of the inhabitants of Europe; a portion of them have not been in the habit of preaching a doctrine of this description, consequently we shall have to break up new ground.*" (Journals of Discourses, vol. i, pp. 53, 54.)

Here was the first public promulgation of this doctrine and practice, as one to be



accepted by the church. Having in this manner "broken the ground," after explaining fully the nature and requirements of the new doctrine, he proceeded to give its origin, and to announce the penalty attached to its rejection, which was that those to whom it should be taught, and who should reject it, were to be damned. (*Ibid.*, p. 64.)

Afterward Brigham Young preached a sermon devoted exclusively to this subject, causing the "Revelation" on celestial marriage to be read to the congregation.

From this time forth polygamy has been claimed to be a religious institution of Utah, and the authority of Congress to interfere with it has been strenuously denied.

Polygamy is no part of the Mormon religion as established by Joseph Smith. Not only is this distinctly proven by the testimony of Joseph Smith, jr., in the evidence reported by Mr. Ashley, (House Reports, 39th Cong., 1st session, No. 96, pp. 5, 6, 7,) but it is shown by the Book of Mormon and the Book of Doctrine and Covenants, the Old and New Testaments of Mormonism; by the preachings and teachings of all their speakers and writers previous to 1852.

What is the law of the United States in regard to polygamy? Express statute passed July, 1862, (12 Statutes at Large, 501, 502,) provides suitable penalties for the violation of the law against polygamy. Have the people of Utah obeyed this statute? Your committee are here again to offer to your consideration statements given by contestant's counsel:

Did this community then submit to that law, and obey it? Or have they since persistently lived in its open violation? Polygamy has alarmingly increased since the passage of the law. Brigham Young himself was one of the first to violate it, publicly espousing another wife on the 29th of January, 1863.

In the summer of 1863 Judge Drake, upon the hearing of a *habeas corpus* case, ordered that a girl, who had been inveigled into a "plural" marriage with a Mormon bishop, should be returned to the custody of her mother, and the marshal was ordered to execute the decree. But the people seized the girl as she was passing out of the court-house, bore her off in triumph, and delivered her to the bishop.

Judge Drake tells us that "since the commencement of 1865 polygamy has increased at least one hundred per cent. throughout the Territory. Previous to the year 1863, this doctrine or practice was not generally held to be a religious necessity, but merely a tolerance to be indulged in by those who desired it. It is now held to be a cardinal point. That and the shedding of the blood of apostates to save their souls are the two soul-saving doctrines of the Mormon faith." (Statement of Hon. Thomas J. Drake, House Mis. Doc., 2d session 40th Congress, No. 35, pp. 9, 10.)

The question then arises, shall a community be represented in the Congress of the United States who are thus living in open violation of a law passed for the protection of the highest interests of society and of the State?

I have thus considered the question in reference to polygamy generally, without referring specially to those obscene and disgusting practices which, in this case, are its concomitants. Incest in its various forms, and under various names, is practiced and encouraged.

The marriage of a man with the mother and her daughters indiscriminately, and marriage with a half-sister, are permitted. Wm. Hepworth Dixon says that Brigham Young admitted to him in conversation that he saw no objection to the marriage of brother and sister. But he spoke for himself only, as he thought the church was not yet prepared for so strong a doctrine. (New America, by Wm. Hepworth Dixon, p. 216.)

By reference to a sermon preached by Young, April 8, 1853, and reported in the Deseret News, volume iii, No. 12, it will be seen that he thought it prepared for another doctrine equally strong, the marriage of a mother with her own son.

Such are the doctrines and practices which are sought to be established and incorporated into the framework of society in the heart of this continent. Is it not time, Mr. Chairman, that the representative of this corrupt, licentious, this tyrannical, traitorous, and bloody priesthood should be sent back to his constituents, with instructions to abandon their unwarrantable assumptions of temporal power, obey the laws, and remodel their government, so that it shall conform to the spirit of our free institutions?

It is proper that the industrial condition of Utah should, together with the other phases of society, be laid before the House; and your committee, therefore, present the accompanying statement, which, coming from parties favorable to contestant in this case, may be, so far as it is friendly to Mormon customs and developments of the natural resources of Utah Territory, received as impartial:

Besides the precious metals, there are also iron, coal, copper, &c. Some of the coal



mines lately discovered in Rush Valley are very near these mines. Wood and water are abundant. Fish, provisions, and clothing, and salt enough to supply a world; and, ere long, when the great Pacific railroad is built, passing through our valleys, not only may our ores and precious metals arrive in New York in six days, but salt in abundance to supply even Syracuse at a cheaper rate than it can be made there.

The produce of Utah consists in part of wheat, barley, rye, oats, beans, corn, natural and cultivated grasses, potatoes, onions, turnips, carrots, beets, cabbages, &c.; and of fruit of good size and superior flavor, apples, pears, plums, apricots, peaches, nectarines, grapes, cultivated and wild strawberries, raspberries and blackberries, currants, gooseberries, cultivated and wild watermelons, muskmelons, pumpkins, squash, cucumbers, &c.; bees, recently introduced from Southern California, are doing well and producing honey; meats of all sorts, home-fed and imported. The potatoes and peaches are unusually large, abundant and good, as admitted by all strangers. By them they are no doubt more highly relished after a tedious journey over the plains of over one thousand miles, often occupying three months of time.

A thousand streams issuing from the cañons, descending from melting snows and elevated springs, are full of fish, and subdivided and guided by innumerable channels, sparkling clear as crystal through every street, and often cold as ice-water. In summer supplies are taken up early in the morning and kept in cool cellars for use during the day; and the wealthier have wells dug contiguous to their kitchens, where clear, cold, spring water can always be had.

No fish in the Great Salt Lake, but millions of salmon and trout are obtained from Lake Utah, fifty miles south of Great Salt Lake City, and from Jordan River and the many streams descending from the mountains; also mullet, chubs, suckers, &c., in great abundance. Price varying from five to twenty cents per pound. Wild geese and ducks innumerable are had in the winter; hares and rabbits, in their season, are also very numerous.

The Mormon settlements extended from Fort Limhi, Montana, to the Colorado River, Arizona, over one thousand miles. Now, perhaps, eight hundred miles is the distance from the extreme north settlement to Fort Call, on the Colorado south, and every settlement on this long range raises abundance of grain, stock, &c., and cotton (in some of those south) of excellent quality; flax and wool are also raised and manufactured in large quantities. "The settlers go in strong for home manufactures."

The future of Great Salt Lake City cannot well be contemplated but with wonder and gratitude; we find her already an oasis in the desert, the admiration of passing thousands, the replenishing market and refreshing place of emigrants, miners, and travelers. What will she be when steamers on the Missouri and Colorado bring the necessities and luxuries of all nations to within four hundred miles of this already great inland metropolis? What, when the great Pacific railroad will convey all these and thousands of commercial men from the Atlantic and Pacific in from four to six days?

I shall now endeavor to meet and answer some of the objections that may be raised against the mines of Utah. "They are new and unknown." So were the mines of California, Idaho, Colorado, Nevada, and Montana at first. Yet look at the millions of the precious metals brought from these during the past few years. "Utah contains a peculiar people; they pay no taxes, charge high for provisions, and are unsafe to dwell among." I admit they are a peculiar people, and many of them—say 25,000 in the city, 95,000 in the Territory—dislike as much gamblers, drunkards, and licentiousness, as they prefer honesty, sobriety, industry, and virtue. There are but few saloons for idlers or loafers, and no places of "ill-fame;" and if that people dislike the introduction of a heterogeneous mass of strangers, it is not the honest, hard-working miners, but those who often accompany or follow them, to defraud them of the fruits of their hard-earned labors, and seduce the virtuous. The apparently severe civic laws do not affect the industrious miners, but are generally approved and sustained by them, as well as by the military and citizens generally. The leaders and people of Utah know and respect the right of government to all the public domain and mining lands. They have paid about 2½ per cent. local taxes for many years, and all the internal revenue demanded for support of government for the last three or four years, and in the war with Mexico volunteered 500 of their best men to aid government when asked. These facts are too often misrepresented and overlooked; and the prices of Utah are regulated, as elsewhere, by supply and demand. It is true an attempt was made to raise the price of produce when United States currency was much depressed in value, but it did not last. The fall in the price of gold, and a temporary stoppage of demand, soon lowered the prices. Flour, that before the opening of our neighboring mines was current at \$3 to \$6 per 100 pounds, when the demand from the mines rushed in upon them, rose to \$12 per 100 and upward; but since the heavy shipments by the Missouri River



to these mines, I am informed that flour at Great Salt Lake City has again receded to \$6 per 100. So has it been with other produce—increased demand or diminished supply has raised prices, and *vice versa*.

"And as to the safety and health of Utah, as a place of residence, it is preferable to New York—much less rowdyism, robbery, and murder, in proportion to the population. The laws are wholesome, the good are *free* to do right, and the vicious restrained." The executive alone, and aided by the military provost marshals, are united and powerful, and do maintain peace in our cities. All honorable American citizens passing through our cities have admitted this and more in favor of Utah, as a healthy, industrious, and prosperous people. The masses will remain at their usual employment and the cultivation of the soil. They depend on their own toil for grain—there is no importation; they are unwilling to risk being without bread, and depend on others. There will be ample room for thousands of our soldiers returning from the war, and other industrious miners, to prosecute their mining labors, not only uninterruptedly, but, if necessary, they will be aided in the maintenance of their rights.

The apparent industrial condition of the Territory at this time is certainly good, and its people law-abiding from their peculiar stand-point, although past acts of violence have disgraced its annals, and polygamy is a stain on its social system, and should be abolished.

#### STATEMENT OF SITTING DELEGATE.

A letter and tabular statements, laid before your committee by the sitting delegate after the foregoing sketch of Utah and its resources had been drawn up, are herewith presented to the House. (See statement of sitting delegate marked K.)

It is much to be regretted that the sitting delegate delayed furnishing your committee with any facts within his knowledge or control to so late a period in the investigation of this case. Much of the labor of your committee would then have been saved and the form of this report could have been materially shortened and condensed. Nor is the information furnished as full and satisfactory as your committee sought and required. Should any further investigation of the affairs of the Territory of Utah be deemed advisable by this House, proper care should be taken to anticipate the delay and difficulty above referred to.

Your committee have collected from the authentic printed works of the Mormons the accompanying extracts, illustrating the views of your committee in regard to the character and disposition of a majority of the people of the Territory of Utah, and present them to the House as the reasonable basis, in certain respects, of the foregoing report of your committee. (See the "Doctrine and Covenants," marked L.)

That an estimate may be formed of the comparative influence which the Blue Laws of Connecticut may have had in developing the Mormon society and its kindred organizations in this country, extracts from the code of 1638, known as the Blue Laws, have also been annexed. The special *interpretation* of divine scripture is the source of human legislation in the Blue Laws, and a *direct revelation* from God is the source of authority among the Mormon leaders. Hence the parallel drawn by your committee and their conclusion thereon. (See "Constitution of 1638," marked M.)

The laws regulating marriage in the Territory of Utah having been a subject of special legislation by Congress, and a direct violation of the established law being charged by the contestant in this case, your committee have, after due examination, deemed it their duty to offer to the House such information as has come to their knowledge, through reliable channels, touching the practice of polygamy in Utah. By this plan the committee are assured that the House can plainly see for itself the condition of society in this section of the country as presented by



the Mormons themselves, as well as the impression made upon intelligent travelers among them.

The following letter from Liverpool, England, was procured by your committee for the purpose of ascertaining if the works here quoted were now disseminated as books of faith by the Mormons, and offer it as an additional proof of the scheme of this society. (See letter marked V.)

The extracts from non-Mormon books are written by persons who have actually visited the Territory, and by observation and intercourse among the Mormons learned the facts stated by them.

The committee, in absence of other testimony, were necessitated to use these works as the only available means of forming an opinion in regard to the character of the institutions of the people of Utah. (See exhibits N, O, P.)

Your committee herewith append a (copy) special report of the massacre at Mountain Meadows, Utah Territory, in September, 1857, by James H. Carleton, brevet major United States army.

Your committee have deemed it advisable to present, in full, without further comment than to draw attention to—1st, the credibility of this report made by an officer of the army on the spot; 2d, the undoubted and undisputed power of the Mormon leaders throughout Utah Territory at the time this massacre took place; 3d, the evident apathy shown by the Mormons for the fate of these emigrants before and during the massacre

---

CAMP AT MOUNTAIN MEADOWS, UTAH TERRITORY,  
May 25, 1859.

MAJOR: When I left Los Angeles the 23d ultimo, General Clarke, commanding the department of California, directed me to bury the bones of the victims of that terrible massacre which took place on this ground in September, 1857. The fact of this massacre of (in my opinion) at least 120 men, women, and children, who were on their way from the State of Arkansas to California, has long been well known. I have endeavored to learn the circumstances attending it, and have the honor to submit the following as the result of my inquiries on this point.

Doctor Brewer, United States army, whom I met with Captain Campbell's command on the Santa Clara River on the 15th instant, informed me that as he was going up the Platte River, on the 11th of June, 1857, he passed a train of emigrants near O'Fallon's Bluffs. The train was called "Perkins's train," a man named Perkins, who had previously been to California, having charge of it as conductor. That he afterward saw the train frequently; the last time he saw it was at Ash Hollow, on the north fork of the Platte. The doctor says the train consisted of, say, forty wagons. There were a few tents besides, which the emigrants used in addition to the wagons when they encamped. There seemed to be about forty heads of families, many women, some unmarried, and many children. A doctor accompanied them. The train seemed to consist of respectable people, well to do in the world. They were well-dressed, were quiet, orderly, genteel; had fine stock; had three carriages, and other evidences which went to show that this was one of the finest trains that had been seen to cross the plains. It was so remarked upon by the officers who were with the doctor at that time. From reports afterwards received, and comparing the dates with the probable rate of travel, he believed this was the identical train which was destroyed at Mountain Meadows. I could get no information of these emigrants of a date anterior to this. Here seems to be given the first glimpse of their number, character, and condition, and an authentic glimpse, too, if the train destroyed was the one seen by the doctor, of which there can hardly be a doubt. The doctor was confirmed in his belief that the train he saw was the one destroyed by many reasons; among them one fact seems to be very convincing. He observed a carriage in the train in which some ladies rode, to whom he made one or more visits as they journeyed along. There was something peculiar in the construction of the carriage and its ornaments, its blazoned stag's head upon the panels, &c. This carriage, he says, is now in possession of the Mormons. Besides, he afterward heard as a fact that this train had been entirely destroyed. The people who owned it would not have been likely to sell such an important part of their transportation midway their journey. The road upon which these emigrants were seen by Doctor Brewer crosses the Rocky Mountains through the South Pass, and thence goes



on down into the great basin to Salt Lake City; and thence southward along the western base of the Wahsatch Mountains to what is called the Rim of the Basin. Here the "divide" is crossed, when it descends upon the valley of Santa Clara affluent toward the Colorado. Fillmore City is upon one of the many streams which run westward down from the Wahsatch Mountains into the basin. It is about one hundred and forty miles from Salt Lake City; then upon another stream, ninety miles further south is Parowan City; then upon still another stream, eighteen miles south of Parowan, is Cedar City; then to a settlement on Pinto Creek is twenty-four miles; thence to Hamblin's house on the northern slope of the Mountain Meadows, six miles; from Hamblin's house over the rim of the basin to the southern point of the Mountain Meadows, where there is a large spring, is four miles and one thousand yards. This swell of land or water-shed, called the rim of the basin, runs west across nearly midway the valley called the Mountain Meadows. This valley runs north and south; its northern portion is drained toward the basin, its southern portion toward the Santa Clara. Down on the Santa Clara is a Mormon settlement called "the Fort." Here some thirty families reside. It is thirty-four miles from Mountain Meadows. East of Cedar City, say eighteen miles on the east slope of the Wahsatch range drained by Virgin River, is the town of Harmony, of one hundred families; and further down the Virgin River, twelve miles from "the Fort," on the Santa Clara, is Washington City, also of one hundred families. The Santa Clara joins the Virgin River near Washington City.

The Pah-Vent Indians live near Fillmore City.

The Pah-Ute Indians are scattered along from Parowan southward to the Colorado.

The train of emigrants proceeding southward from Fillmore City toward the Mountain Meadows is next seen, so far as my inquiries go, by a Mr. Jacob Hamblin, a leading Mormon who has charge of "the Fort" on the Santa Clara, and resides there in the winter season, but who has a cattle ranch and a house where he lives in the summer-time, at the Mountain Meadows. I here give you what he said, and which I wrote down sentence by sentence as he related it. He told me he had given the same information to Judge Cradelbaugh.

"About the middle of August, 1857, I started on a visit to Great Salt Lake City. At Corn Creek, eight miles south of Fillmore City, I encamped with a train of emigrants, who said they were mostly from Arkansas. There were, in my opinion, not over thirty wagons. There were several tents, and they had from four hundred to five hundred head of horned cattle, twenty-five head of horses, and some mules. This information I got in conversation with one of the men of the train. The people seemed to be ordinary frontier "homespun" people as a general thing, some of the outsiders were rude and rough, and calculated to get the ill will of the inhabitants. Several of the men asked me about the condition of the road and the disposition of the Indians, and where there would be a good place to recruit their stock. I asked them how many men they had; they said they had between forty and fifty "that would do to tie to." I told them I considered if they would keep a good lookout that the Indians did not steal their animals, half that number would be safe, and that the Mountain Meadows was the best point to recruit their animals before they entered upon the desert. I recommended this spring and the grazing about it here, four miles south of my house, as the place where they should stop. The most of these men seemed to have families with them. They remarked that this one train was made up near Salt Lake City of several trains that had crossed the plains separately, and being southern people had preferred to take the southern route. This was all of importance that passed between us, and I went on my journey, and they proceeded on theirs. On my way back home, at Fillmore City I heard it said that that company (meaning the train referred to) had poisoned a small spring at Corn Creek, where I had met them. There was some considerable excitement about it among the citizens of Fillmore, and among the Pah-Vent Indians who lived within eight miles of that place. I was told that eighteen head of cattle had died from drinking the water, that six of the Pah-Vents had been poisoned from eating the flesh of the cattle that died, and that one or two of these Indians had also died. Mr. Robinson, a citizen of Fillmore, whose son was buried the day I got there, said that the boy had been poisoned in "trying out" the tallow of the dead cattle. I am satisfied that he believed what he said about it. I thought at the time that the spring had been poisoned as stated. I encamped that night with a company from Iron County, who told me that the company from Arkansas had all been killed off at Mountain Meadows, except seventeen children. I afterwards met, between Beaver and Pine Creek, Colonel Daim, of Parowan, who confirmed what these people from Iron County had said. He further stated that the Indians were collecting on the Muddy with a determination to "wipe out" another company of emigrants, which was several days in rear of the first. He mentioned that the Indians had supplied themselves with arms and ammunition from the train destroyed at the Meadows. After consulting with him he advised me to go forward and spare no pains in trying to prevent their carrying their purpose into execution, and he gave me an order to press into service any animal I might require for that purpose. I got a horse at Beaver at eight o'clock that evening, and the next evening, at Pinto Creek, eighty-three miles distant, I met Mr. Dudley Leavett



from the settlements on the Santa Clara. I told him what I had heard. He told me that it was true, and that all the Indians in the southern country were greatly excited, and *all hell* could not stop them from killing or from at least robbing the other train of its stock. He further stated that several interpreters from the Santa Clara had gone on with this last train. I told him to return and get the best animal he could find at my ranch, and go on as fast as he could and endeavor to stop further mischief being done; that if the Indians ran off the stock of the train, for himself and all the interpreters to go and recover it if possible, and prevent further depredations. He left me under these instructions. The next morning, which I think was the 18th of September, 1857, I arrived at my ranch, four miles from the Meadows. Here I had left my family. I found at the ranch three little white girls, in the care of my wife, the eldest six or seven years of age, the next about three, and the next about one. The youngest had been shot through one of her arms, below the elbow, by a large ball, breaking both bones and cutting the arm half off. My wife having a young child of her own, and these three little orphans besides, my home appeared to be anything but cheerful. About 1 or 2 o'clock that day I came down to the point where the massacre had taken place, in company with an Indian boy named Albert, who had been brought up in my family. The boy told me that the inhabitants from Cedar City had come down and buried the murdered people in three large heaps, which he pointed out to me; the boy showed me two girls who had run some ways off before they were killed. The wolves had dug open the heaps, dragged out the bodies, and were then tearing the flesh from them. I counted nineteen wolves at one of these places. I have since learned, from people who assisted in burying the bodies, that there were one hundred and seven men, women, and children found dead upon the ground. I am satisfied that all were not found. The most of the bodies were stripped of all their clothing, were then in a state of putrefaction, and presented a horrible sight. There was no property left upon the ground except one white ox, which is still at my ranch. The following summer, when the bones had lost all their flesh, I reburied them, assisted by a Mr. Fuller. The Indians have often told me that they made an attack on the emigrants between daylight and sunrise, as the men were standing around the camp fires, killing and wounding fifteen at the first discharge, which was delivered from the ravine near the spring, close to the wagons, and from a hill to the west; that the emigrants immediately corralled their wagons and threw up an intrenchment to shelter themselves from the balls. When I first saw the ditch it was about four feet deep, and the bank about two feet high. The Indians say they then ran off the stock, but kept parties at the spring to prevent the emigrants from getting to the water; the emigrants firing upon them every time they showed themselves, and they returning the fire. This was kept up for six or seven days. The Indians say they lost but one man killed, and three or four wounded. At the end of six or seven days they say a man among them who could talk English called to the emigrants and told them if they would go back to the settlements and leave all their property, *especially their arms*, they would spare their lives; but if they did not do so, they would kill the whole of them. The emigrants agreed to this, and started back on the road toward my ranch. About a mile from the spring there are some scrub oak bushes and tall sage growing on each side of the road, and close to it. Here a large body of Indians lay in ambush, who, when the emigrants approached, fell upon them in their defenseless condition, and with bows and arrows, and stones, and guns, and knives, murdered all, without regard to sex or age, except a few infant children, seventeen of which have since been recovered. This is what the Indians told me nine days after the massacre took place. From the position of the bodies, this latter part of their story seems to be corroborated, and I should judge that the women and children were in advance of the men when the last attack upon them was made. When I buried the bones last summer I observed that about one-third of the skulls were shot through with bullets, and about one-third seemed to be broken in with stones.

"The train I sent Leavett to protect had gotten as far as the cañon five miles beyond the Muddy, when the Indians made a descent upon its loose stock, driving off, as the emigrants have since said, two hundred and eighty head of cattle. Leavett and the other interpreters recovered between seventy-five and one hundred head, which were brought back to my ranch. Of these the Indians afterward demanded and stole some forty head, and last January I turned over to a Mr. Lane, from California, the balance. These are all the facts within my knowledge connected with the destruction of one, and the passing along of the other, of these two trains."

This Jacob Hamblin seems to be a man of considerable importance and note among the Mormons in this southern part of the Territory. He is about fifty years of age, and, although with but little education, is a shrewd, intelligent, thinking man. Judge Cradlebaugh, I heard, was of opinion Hamblin was acting in good faith, and gave what he really believed was a true account of the massacre, and of the Mormon part taken in it. Hamblin has two wives: one about forty-five or fifty years of age, a sister of a Mormon named Hiram Judd, who lives at Hamblin's house at the Mountain Meadows; and another wife of about eighteen, a sister of the Dudley Leavett of whom he speaks.



Hamblin is, and has for a long time been, Indian sub-agent for the Pah-Utes. He speaks their language well and has great influence with them. He told me the church had granted him a piece of land ten miles square, which covers the whole of the Mountain Meadows, the best grazing tract in Utah Territory. It is quite a significant fact that this ranch whereon the massacre took place is well stocked with cattle, among which the white ox is acknowledged to be. Mr. Hamblin and his story will be further considered upon at another place in this report. His eldest wife came to my camp and staid there with her husband the night of the 19th instant. The next morning I wrote down, word by word as she related it, her account of the massacre. Her husband took good care to be present at the time, and also took very good care to give her occasional promptings, although it has been perceived he was at Salt Lake City when the facts she related occurred. Her story was as follows:

"I was residing four miles north of this spring at the ranch in the fall of 1857. Early in September of that year, about the first, a large train of wagons—I could not tell how many, think about fifty—passed by our house. None of the people stopped. There may have been a man who came and inquired the way to the spring. It was about noon. The next morning a man from the train came back to the house to see if I could sell him some butter and cheese. I had none, and he staid but a short time, saying his people had camped at the spring, where they would stay awhile to recruit their stock. I heard no more about the people of the train until Monday morning before daylight, when I heard a great number of guns firing at the spring. This firing was kept up until after daylight, all of half an hour, when it ceased. I did not hear any more guns until evening, after dusk, when the firing again began, but not so rapidly as before. This lasted say fifteen minutes, and I think there were some shots fired during the night. Sometimes I could not hear them so plainly as at others, owing to the changing winds. After the firing of the first morning some white men came to our house and said that the Indians had attacked the train because the emigrants had poisoned a spring near Fillmore. There was but one man about our house. His name was David Tullis. He is an Englishman and now lives at the fort on Santa Clara. There was an Indian boy, Albert. Tullis was herding the cattle, and Albert the sheep. The white men who stopped at our house and told us about the excitement among the Indians, said they had been here at the spring and tried to stop the fighting, but that the Indians had become enraged and were determined to kill the emigrants; that they were gathering for this purpose from all quarters. The Indians were frequently passing and repassing our house. They said I need not be afraid; they were friendly to me and would not hurt me, but that they would kill the emigrants. This firing and people passing to and fro continued about a week. Several people from Harmony and other places gathered about and said they were trying to stop it. I noticed among them John D. Lee. He was at my house two or three times during the week. At length, between sundown and dark of the last day, I heard a firing greater than before and more distinct. This is the time when the last of them were killed after they started toward our house. In about an hour a wagon drove up to our house having seventeen children in it, the most of them crying. One, a girl about a year old, had been shot through the arm, and another girl, about four years old, had been wounded in the ear. Their clothes were bloody. The wagon was driven up to the door by a man named Shurtz or Shirts, a son-in-law of John D. Lee. John D. Lee seemed to have the distributing of the children. The little girl who was shot through the arm could not well be moved. She had two sisters, Rebecca and Louisa, one seven and the other five, who seemed to be greatly attached to her. I persuaded Lee not to separate them, but to let me have all three of them. This he finally agreed to and the children staid with me and I nursed the wounded child until it recovered, though it has lost forever the use of its arm. The next day after the last massacre, Lee and the rest started up the road with all the rest of the children in a wagon; and the Indians scattered off. This is all I know personally on the subject."

Mrs. Hamblin is a simple-minded person of about forty-five, and evidently looks with the eyes of her husband at everything. She may really have been taught by the Mormons to believe it is no *great* sin to kill Gentiles and enjoy their property. Of the shooting of the emigrants, which she had herself heard, and knew at the time what was going on, she seemed to speak without a shudder or any very great feeling; but when she told of the seventeen orphan children who were brought by such a crowd to her own house, of one small room—there in the darkness of the night, two of the children cruelly mangled, and the most of them with their parents' blood still wet upon their clothes, and all of them shrieking with terror and grief and anguish, her own mother heart was touched; she at least deserves kind consideration for her care and nourishment of the three sisters, and for all she did for the little girl "about one year old, who had been shot through one of her arms, below the elbow, by a large ball, breaking both bones and cutting the arm half off."

A Snake Indian boy called Albert Hamblin, but whose Indian name was a word which meant *hungry*, who is now about seventeen or eighteen years of age, says that Mr. Jacob Hamblin bought him beyond where Camp Floyd is located, and that he has



lived with Mr. Hamblin six years here and about three years up north. He was sent by Mr. Hamblin to my camp at Mountain Meadows, on the 20th day of May, 1859, and, in speaking of the massacre at this place, related what follows, in very good English:

"In the first part of September, a year and a half ago, I was at Mr. Hamblin's ranch, four miles from here. My business was to herd sheep. I saw a train come along the road and pass down this way; it was near sundown. I drove the sheep home and went after wood, when I saw the train encamp at this spring from a high point of land where I was cutting wood. When the train passed me I saw a good many women and children. It was night when I got home. Another Indian boy named John, who lives at the Vegar, and talks some English, was with me. He lived with a man named Sam Knight, at Santa Clara. After the train had been camped at this spring three nights, the fourth day in the morning just before light, when we were all abed at the house, I was waked up by hearing a good many guns fired; I could hear guns fired every little while all day until it was dark. Then I did not know what had been done. During the day, as we (John and I) sat on a hill herding sheep, we saw the Indians driving off all the stock, and shoot some of the cattle; at the same time we could see shooting going on down around the train; emigrants shooting at the Indians from the corral of wagons, and Indians shooting at them from the tops of the hills all around. In this way they fought on for about a week. I asked an Indian what he was killing those people for. He was mad, and told me unless I kept "my mouth shut" he would kill me. Three men came down from Cedar City to our house while the fighting was going on; they said they came after cattle. Other men passed to and fro from Santa Clara to our house during the nights. These three men from Cedar City staid about the house awhile, pitching horse-shoe quoits while the fighting was going on, when they afterward went back to Cedar City. Dudley Leavett came up from Santa Clara in the night while the emigrants were encamped here, but he did not see them. He went on to Cedar City to buy flour. When he got to the house we told him the emigrants were fighting here. One afternoon, near night, after they had fought nearly a week, John and I saw the women and children, and some men, leave the wagons and go up the road toward our house. There were no Indians with them. John and I saw where the Indians were hid in the oak bushes and sage, right by the side of the road, a mile or more on their route; and I said to John I would like to know what the emigrants left their wagons for, as they were going into a worse fix than ever they saw. The women were on ahead with the children. The men were behind. Altogether 'twas a big crowd. Soon as they got to the place where the Indians were hid in the bushes, each side of the road, the Indians pitched right on them and commenced shooting them with guns and bows and arrows, and cut some of the men's throats with knives. The men ran in every direction, the Indians after them and yelling and whooping. Soon as the women and children saw the Indians spring out of the bushes, they all cried out so loud John and I heard them. The women scattered and tried to hide in the bushes, but the Indians shot them down; two girls ran up the slope toward the east about a quarter of a mile; John and I ran down and tried to save them; the girls hid in some bushes. A man who is an Indian doctor also told the Indians not to kill them. The girls then came out and hung around him for protection, he trying to keep the Indians away. The girls were crying out loud. The Indians came out and seized the girls by their hands and their dresses, and pulled and pushed them away from the doctor and then shot them. By this time it was dark, and the other Indians down by the road had got nearly through killing all the others. They were about half an hour killing the people from the time they first sprang out upon them from the bushes. Some time in the night, Tullis and the Indians brought some of the children in a wagon up to the house. The children cried nearly all night. One little one, a baby just commencing to walk around, was shot through the arm. One of the girls had been shot through the ear. Many of the children's clothes were bloody. The next morning we kept three children, and the rest were taken to Cedar City; also the next morning the trains of wagons went up to Cedar City with all the goods. The Indians got all the flour; some of it I saw buried this side of Pinto Creek. There were two yoke of cattle to each wagon as they passed up. The rest of the stock had been killed to be eaten by the Indians while the fight was going on, except some which were driven over the mountains this way and that. The Indians stripped naked the dead bodies—that is, all the men; some of the women had their underclothes left. There were a good many men who came over from Pinto Creek and about, and staid around the house while the fight went on. I saw John D. Lee there about the house during that time, he lives in Harmony; and Richard Robinson, Prima Coleman, Amos Thornton, Brother Dickinson, who all live at Pinto Creek; Thornton I saw at the house. When father (Jacob Hamblin) came back I came down with him on to the grounds. The bodies were all buried then, so we could not see any. There were plenty of wolves around. The two girls had been buried also, and I did show them to father. The Indians buried the bodies, taking spades from the wagons. The people from Cedar City came down three days after the massacre, but the Indians had buried all the bodies before they came. This is all I know about it."



This Albert Hamblin is nearly a grown man in point of size, and from appearance and bearing has evidently had engrafted upon his native viciousness all the bad traits of the community in which he lives. Two of the children are said to have pointed him out to Dr. Forney as an Indian whom they saw kill their two sisters. His story is artfully made up, evidently part truth and part falsehood. Leavett could not have passed up from "the fort" to Cedar City without knowing where the emigrants were besieged, as the road runs near the spring where there corral was, and between it and some hills occupied by the Mormons and Indians. That Albert staid upon a neighboring hill, "herding sheep," day after day, while the fight lasted, and then went up to the house of nights to go to sleep, cannot be true. That Mormons were passing and repassing upon the road, day and night, and did not know what was going on, is simply absurd to one conversant with the surroundings of the place. In this Indian's statement, that some of the Mormons at the house were "pitching horse-shoe quoits," a glance is given at the fiendish levity with which the murdering, day by day, of this artfully entrapped party of Gentiles, men, women, and children, were regarded. This "pitching of horse-shoe quoits" was during the time when dropping shots from the Indrans and the other Mormons concealed around the spring and behind the crest of hills kept back the perishing emigrants from water. There was *time enough* for some to go up to Hamblin's house for refreshments. No danger of the emigrants getting away. It was all safe in that quarter. "There was time enough for us to have a quiet game of quoits; the other boys will take care of matters down there."

The general will hardly fail to observe the discrepancy between Hamblin's statement and that of Albert in relation to the burial of the two girls, and in relation to the burial of the bodies of the others who had been murdered. Hamblin says the people from Cedar City buried them; Albert that the Indians did it, taking spades from the wagons—not a likely thing for *bona fide* Indians to do. My own opinion is that the remains were not buried at all until after they had been dismembered by the wolves, and the flesh stripped from the bones, and then only such bones were buried as lay scattered along nearest the road. Albert had evidently been trained in his statement. He gave much of it after close cross-questioning, keeping always the Mormons in the background, and the Indians conspicuously the prominent figures and actors, as Hamblin and his wife had endeavored to do.

It was not until I told him that Hamblin and his wife had informed me that John D. Lee and the Mormons were there and had asked him how it was possible he had not seen them that he recollected about "brother Lee" and "brothers" Prime Coleman, Amos Thornton, Richard Robinson, and "brother" Dickinson, from Pinto Creek. He too had fallen into the general customs of the people and called every man "brother." I questioned other Mormons in relation to the massacre, but many of them said they had moved from the northern part of the Territory since it took place. Others, that they were harvesting at Parowan, Cedar, and at "the fort," and knew nothing of it until it was all over. Even "brother" Prime Coleman told me he was harvesting near Parowan just before that time with "brother" Benjamin Nell, but when the massacre took place he was down on the Muddy River with "brother" Ira Hatch *to keep down disturbances there among the Indians*. (The Muddy is one hundred and sixty-three miles from Parowan on the road to California. He had to pass Mountain Meadows to go there.) He said that as he and Hatch were coming back they saw in the sand the tracks of three men who wore fine boots. This was at the Beaver Dams, between Mountain Meadows and the Muddy, and fifty miles from the Meadows. He and Hatch were frightened at this sign, were afraid of robbers, and did not stop even for water until they reached the Santa Clara, twenty miles off. At Pine Valley, near Mountain Meadows, they first heard of the massacre. There is no doubt but that all three of these men were active participants in the butchering at the Meadows. The foregoing is the Mormons' story of the massacre. As it took place on Hamblin's ranch, and within hearing of his family, it was impossible for them to be "out harvesting," or "up north," or "down on the Muddy." He himself had gone to Salt Lake City; at least he says so; but then this I think needs proof. Some account had to be made up, and the one most likely to be believed was, that the whole matter had been started by the Indians and carried out by them, because the emigrants had poisoned a spring near Fillmore City! Mr. Rogers, United States deputy marshal, who accompanied Judge Cradlebaugh in his tour to the south, told me the water of the spring referred to runs with such volume and force, "a barrel of arsenic would not poison it."

While the Mormons say the Indians were the murderers, they speak with no sympathy of the sufferers, but rather in extenuation of the crime, by saying the emigrants were not fit to live; that besides poisoning the spring, "they were impudent to the people on the road; robbed their hen-roosts and gardens; and were insulting to the church; called their oxen 'Brigham Young,' 'Heber Kimball,' &c., and altogether were a rough, ugly set that ought to have been killed anyway."

But there is another side to this story: It is said that some two years since Bishop Perley Pratt was shot in the Cherokee nation, near Arkansas, by the husband of a woman who had run off with that saintly prelate. The Mormons swore vengeance on



the people of Arkansas, one of whom was the injured husband. The wife came on to Salt Lake City after the bishop was killed, and still lives there. About this time, also, the Mormon troubles with the United States commenced, and the most bitter hostility against the Gentiles became rife throughout Utah among all the Latter Day Saints. It will be recollected that even while these emigrants were pursuing their journey overland to California, Colonel Alexander was following upon their track with two or more regiments of troops ordered to Utah to assist, if necessary, in seeing the laws of the land properly enforced in that Territory. This train was undoubtedly a very rich one. It is said the emigrants had nearly nine hundred head of fine cattle, many horses and mules, and one stallion valued at \$2,000; that they had a great deal of ready money besides. All this the Mormons at Salt Lake City saw as the train came on. The Mormons knew the troops were marching to their country, and a spirit of intense hatred of the Americans and toward our government was kindled in the hearts of this whole people by Brigham Young, Orson Hyde, and other leaders, even from the pulpits. Here, opportunely, was a rich train of emigrants, American Gentiles, that is, the most obnoxious kind of Gentiles; and not only that but *these* Gentiles were from Arkansas, where the saintly Pratt had gained his crown of martyrdom. Is not here some thread which may be seized as a clue to this mystery, so long hidden, as to whether or not the Mormons were accomplices in the massacre? This train of rich Arkansas Gentiles was doomed from the day it crossed through the South Pass and had got fairly down into the meshes of the Mormon spider-net from which it was never to become disentangled. Judge Cradlebaugh informed me that about this time Brigham Young, preaching in the Tabernacle, and speaking of the troubles with the United States, said that up to that moment he had protected emigrants who had passed through the Territory, but now he would turn the Indians loose upon them. It is a singular point, worthy of note, that this sermon should have been preached just as the rich train had got into the valley and was now fairly entrapped; a sermon, good coming from him as a letter of marque to these land pirates, who listened to him as an oracle. The hint thus shrewdly given was not long in being acted upon. From that moment these emigrants, as they journeyed southward, were considered the authorized, if not legal, prey of the inhabitants. All kinds of depredations and extortions were practiced upon them. At Parowan they took some wheat to the mill to be ground; the miller went to ask the bishop if he might grind this grain for the damned Gentiles. The bishop replied, "Yes; but do you take double toll." This shows the spirit with which they were treated. These things are now leaking out; some of those who were then Mormons have renounced their creed, and through them much is learned, which, taken in connection with facts that are known, serve to develop the truth. It is said to be a truth that Brigham Young sent letters south authorizing, if not commanding, that the train should be destroyed. A Pah-Ute chief, of the Santa Clara band, named Jackson, who was one of the attacking party, and had a brother slain by the emigrants from their *corral* by the spring, says that orders came down in a letter from Brigham Young that the emigrants were to be killed; and a chief of the Pah-Utes named Tonche, now living on the Virgin River, told me that a letter from Brigham Young to the same effect was brought down to the Virgin River band by a man named Huntingdon, who, I learn, is an Indian interpreter and lives at present at Salt Lake City. Jackson says there were sixty Mormons, led by Bishop John D. Lee, of Harmony, and a prominent man in the church named Haight, who lives at Cedar City; that they were painted and disguised as Indians; that this painting and disguising was done at a spring in a cañon about a mile northeast of the spring where the emigrants were encamped, and that Lee and Haight led and directed the combined force of Mormons and Indians in the first attack throughout the siege, and at the last massacre. The Santa Clara Indians say that the emigrants could not get to the water, as the besiegers lay around the spring ready to shoot any one who approached it. This could easily have been done. Major Prince, paymaster United States army, and Lieutenant Ogle, First Dragoons, on the 17th instant, stood on the ditch which was in the corral and placed some men at the spring, twenty-eight yards distant and they could just see the men's heads, both parties standing erect. This shows how vital a point the assailants occupied, how close it was to be assailed, and how well protected it was from a fire coming from the direction of the corral.

The following account of the affair is, I think, susceptible of legal proof, by those whose names are known, and who, I am assured, are willing to make oath to many other facts which serve as links in the chain of evidence leading toward the truth of this grave question: *By whom were these one hundred and twenty men, women, and children murdered?*

It was currently reported among the Mormons at Cedar City, in talking among themselves, before the troops even came down south, (when all felt secure of arrest or persecution,) and nobody seemed to question the truth of it, that a train of emigrants of fifty or upward, of men, mostly with families, came and encamped at this spring at Mountain Meadows, in September, 1857. It was reported in Cedar City, and was not, and is not doubted, even by the Mormons, that John D. Lee, Isaac C. Haight, John M. Higby, (the first resides at Harmony, the last two at Cedar City,) were the leaders



who organized a party of fifty or sixty Mormons to attack this train. They had also all the Indians which they could collect at Cedar City, Harmony, and Washington City, to help them, a good many in number. This party then came down, and at first the Indians were ordered to stampede the cattle and drive them away from the train. They then commenced firing on the emigrants; one Indian was killed, a brother of the chief of the Santa Clara Indians; another shot through the leg, who is now a cripple at Cedar City.\* It was said the Mormons were painted and disguised as Indians. The Mormons say the emigrants fought like lions, and that they saw they could not whip them by any fair fighting. After some days' fighting the Mormons had a council among themselves to arrange a plan to destroy the emigrants. They concluded, finally, that they would send some few down and pretend to be friends, and try to get the emigrants to surrender. John D. Lee and three or four others, head men from Washington, Cedar, and Parowan, (Haight and Higby from Cedar,) had their paint washed off, and dressing in their usual dress, took their wagons and drove down toward the emigrant's corral, as if they were just traveling on the road on their ordinary business. The emigrants sent out a little girl toward them. She was dressed in white. Had a white handkerchief in her hand which she waved in token of peace. The Mormons with the wagons waved one in reply, and then moved into the corral. The emigrants then came out, *no Indians or others being in sight at this time*, and talked with these leading Mormons with the three wagons. They talked with the emigrants an hour or an hour and a half, and told them that the Indians were hostile, and that *if they gave up their arms* it would show the Indians that they did not want to fight, and if they, the emigrants, would do this they would pilot them back to the settlements.

The emigrants had horses which had remained near their wagons; the loose stock, mostly cattle, had been driven off, not the horses. Finally the emigrants agreed to those terms and delivered up their arms to the Mormons with whom they had counseled. The women and children then started back toward Hamblin's house, the men following with a few wagons that they had hitched up. On arriving at the scrub oaks, &c., where the other Mormons and Indians lay concealed, Higby, who had been one of those who had inveigled the emigrants from their defenses, *himself gave the signal to fire*, when a volley was poured in from each side, and the butchery commenced, and was continued until it was consummated. The property was brought to Cedar City and was sold at public auction. It was called in Cedar City, and is called now by the facetious Mormons, "Property taken at the siege of Sebastopol!" The clothing stripped from the corpses, bloody, and with lots of flesh in it, shredded by the bullets from the persons of the poor creatures who wore it, was placed in the cellar of the tithing office, (an official building,) where it lay about three weeks, when it was brought away by some of the party; but witnesses do not know whether it was sold or given away. It is said the cellar smells of it even to this day.

It is reported that John D. Lee, Haight, and Philip Smith, (the latter lived in Cedar City,) went to Salt Lake City immediately after the massacre, and counseled with Brigham Young about what should be done with the property. They took with them the ready money they got from the surrendered emigrants, and offered it to Young. He said he would have nothing to do with it. He told them to divide the cows and cattle among the poor. They had taken some of the cattle to Salt Lake City when they went up, and after the talk with Brigham they sold these to the merchants there. Lee told Brigham that the Indians would not be satisfied if they did not have a share of the cattle. Brigham left it to Lee to make the distribution. One or two of the Mormons did not like that Lee had this authority, as they say he swindled them out of their share. Lee was the smallest man of the lot.

The wagons, carriages, and rifles, &c., were distributed among the Mormons. Lee has a carriage reported to be one of them. The Indians have but few of the rifles.

Much of this seems to be corroborated by a man named Whitlock, a dentist, now at Camp Floyd. Whitlock says he was told by a Mormon, who acknowledged that he was present at the massacre, but who is now in California, that orders to destroy the emigrants first came from above, (Salt Lake City,) and that a party of armed men under the command of a man named John D. Lee, who was then a bishop in the church, but who has since (as Brigham Young says) been deposed, left the settlements of Beaver City, (north of Parowan,) Parowan City, and Cedar City, on what was called a "secret expedition," and after an absence of a few days returned, bringing back strange wagons, cattle, horses, mules, and also household property. There is legal proof that this property was sold at the official tithing office of the church. Whitlock says that this man could not report the detail of the massacre without tears and trembling. He said he was so horrified at these atrocities he fled away from Utah to California. The man said he saw children clinging around the knees of the murderers begging for mercy and offering themselves as slaves for life could they be spared. But their throats were cut from ear to ear as an answer to their appeal. There are now wagons, carriages, and cattle in possession of the Mormons which can be sworn to, it is said, as having belonged to these emigrants by those who saw them upon the plains.

\* There were, without doubt, a great many more killed and wounded.



Two hundred and forty-eight head of cattle were sold on the Jordan River, after the arrival of the army, to United States commissioners, by Mormons; and it is said that they can be traced as having come through the hands of Lee, and Hooper, who was Mormon secretary of state, and were, without doubt, the cattle taken from the emigrants. The Indians are supposed to have gotten but few of the arms. Others are seen in the hands of the Mormons, which are believed to have been captured at the time of the massacre. The Pah-Ute Indians, on the Muddy River, said to me that they knew the Mormons had charged them with the massacre of the emigrants, but, said they, "Where are the wagons, the cattle, the clothing, the rifles, and other property belonging to the train? We have not got them or had them. No, you find all these things in the hands of the Mormons." There is some logical reasoning in that, creditable at least to the obscure minds of miserable savages, whatever be the truth. But there is not the shadow of a doubt but that the emigrants were butchered by the Mormons themselves, assisted doubtless by the Indians. The idea of letting the emigrants come on to an obscure quarter of the Territory, amid the fastnesses of the mountains, with a formidable desert extending from that point to California, over which a stranger to the country could not possibly, without sustenance, escape with his life; to a point where the Indians were numerous to lend assistance, and who could possibly be charged with the crime in case, in the future, any people should give trouble by asking ugly questions on the subject, exhibits consideration as to future contingencies of which these miserable Indians, at least, are entirely incapable. Besides, "fifty men that would do to tie to" in a fight, all well armed, and all expert in the use of the rifle, could have whipped ten times their number of Pah-Ute Indians armed only with the bow and arrow. Hamblin himself, their agent, informed me that to his certain knowledge, in 1855, there were but three guns in the whole tribe. I doubt if they had many more in 1857. The emigrants were to be destroyed with as little loss to the Mormons as possible, and no one old enough to tell the tale was to be left alive. To effect this, the whole plan and operations from beginning to end display skill, patience, pertinacity, and forecast, which no people here at that time were equal to, except the Mormons themselves. Hamblin says three men escaped. They were doubtless herding when the attack was made, or crept out of the corral by night. The fate of one of these he had never learned. He must have been murdered off the road, or perished of hunger and thirst in the mountains. At all events, he never went through to California, or he would have been heard from. One got as far as the Muddy River, ninety odd miles from the Mountain Meadows. There the Indians cut his throat. The other got as far as Las Vegas, forty-five miles still further toward California, where he arrived totally naked, some Indians having stripped him of his clothes. Hamblin said an acquaintance of his coming from that way had seen by marks in the sand where the Indians had thrown him down, and where there had been struggling when he was stripped. The Las Vegas Indians cut his throat likewise. The Mormons had a fort at Las Vegas, now abandoned, but which was occupied at that time.

Here is something which seems to point toward the "track in the sand of three men who wore fine boots," which brothers Ira Hatch and Prime Coleman saw at the Beaver Dams, and at which they became so frightened they did not stop to get water, although there was none other within twenty miles. During this "siege of Sebastopol," or after the final massacre, it was doubtless discovered that the three emigrants had escaped, and brothers Hatch and Coleman, perhaps two Mormons named Young, were sent in pursuit to cut them off on the desert, or to get the Indians to do it. Hatch talks Pah-Ute like a native, and is now an interpreter of their language whenever needed. One of the Youngs, who now lives at Cotton Farm, near the confluence of the Virgin and Santa Clara, tells this story of the emigrants murdered on the Muddy. He and his brother, each on horseback and leading a third horse, were traveling from California, as he says, to Utah. Just before they had arrived at Muddy River they met one of the emigrants on foot. He had been wounded, was unarmed, and without provisions or water. It was at daybreak. He had traveled already nearly a hundred miles from the Mountain Meadows. He seemed to be terror-stricken. His mind was wandering. He talked incoherently about the massacre and of his purposes. Under the awful scenes he had witnessed, the pain of his wound, and the privations he had endured, his senses had given way. They told him of the long deserts ahead, on which, if he pursued his way, he would certainly perish. They persuaded him to return with them, mounted him on their led horse, and so came on to the Muddy, where they stopped to prepare breakfast. One of the Youngs laid his coat, containing in its pocket \$300—all their money—on a bush, and commenced frying some cakes at a fire which had been kindled. The Indians gathered around in great numbers. The chief would seize the cakes from the pan as fast as they were done and eat them. At last one of the Youngs struck the chief with a knife, whereupon all the Indians rose to kill the three men. Young says he and his brother drew their revolvers, and holding them on the Indians kept them at a distance until they got to their horses, had mounted, and were out of arrow-shot. They then looked back for the emigrant, who had seemed, as he sat abstracted by the fire, hardly to comprehend what was going on. He had not left the



spot where he sat. Three or four Indians had him down and were cutting his throat. They themselves then made off, leaving coat, money, and all their provisions. This is their story; but the truth doubtless was, the Youngs, Hatch, and Coleman had followed up the man, had found him beyond the Muddy, brought him back, and then set the Indians upon him.

The fate of these three men seems to close the scenes of this terrible tragedy on all the grown people of that fine train which was seen journeying prosperously forward at O'Fallon's Bluffs on the 11th of the preceding June. There were doubtless atrocious episodes connected with the massacre of the women which will never be known. Mr. Rodgers, the deputy marshal, told me that Bishop John D. Lee is said to have taken a beautiful young lady away to a secluded spot. There she implored him for more than life. She, too, was found dead. Her throat had been cut from ear to ear. The little children whom we left this John D. Lee distributing at Hamblin's house after that sad night have at length been gathered together, and are now either at Indian Farm, twelve miles south of Fillmore City, or at Salt Lake City, in the custody of Dr. Forney, United States Indian agent. They are seventeen in number. Sixteen of these were seen by Judge Cradlebaugh, Lieutenant Kearney, and others, who gave the following information in regard to their personal identity, &c. The children were varying from three to nine years of age—ten girls, six boys—and were questioned separately.

The first is a boy named Calvin; between seven and eight; does not remember his surname. Says he was by his mother when she was killed, and pulled the arrows from her back until she was dead. Says he had two brothers older than himself, named Henry and James, and three sisters, Nancy, Mary, and Martha.

The second is a girl who does not remember her name; the others say it is Demurr.

The third is a boy named Ambrose Miriam Tagit. Says he had two brothers older than himself, and one younger. His father, mother, and two older brothers were killed; his younger brother was brought to Cedar City. Says he lived in Johnson County; but does not know in what State. Says it took one week to go from where he lived to his grandfather's and grandmother's, who are still living in the States.

The fourth is a girl obtained of John Morris, a Mormon at Cedar City. She does not recollect anything about herself.

The fifth is a boy obtained of E. H. Grove. Says that the girl obtained of Morris is named Mary, and is his sister.

The sixth is a girl who says her name is Prudence Angelina. Had two brothers, Jesse and John, who were killed. Her father's name was William, and she had an uncle Jesse.

The seventh is a girl. She says her name is Frances Harris or Horne: remembers nothing of her family.

The eighth is a young boy; too young to remember anything about himself.

The ninth is a boy who says his name is William W. Huff.

The tenth is a boy who says his name is Charles Francher.

The eleventh is a girl who says her name is Sophronia Huff.

The twelfth is a girl who says her name is Betsey.

The thirteenth, fourteenth, and fifteenth are three sisters, named Rebecca, Louisa, and Sarah Dunlap. These three sisters were the children obtained of Jacob Hamblin.

I have no note of the sixteenth.

The seventeenth is a boy who was but six weeks old at the time of the massacre. Hamblin's wife brought him to my camp on the 19th instant. The next day they took him on to Salt Lake City, to give him up to Dr. Forney. He is a pretty little boy, and hardly dreamed he had again slept upon the ground where his parents had been murdered. These children, it is said, could not be induced to make any developments while they remained with the Mormons, from fear, no doubt, having been intimidated by threats. Dr. Forney, it is said, came southward for them under the impression that he would find them in the hands of the Indians. The Mormons say the children were in the hands of the Indians, and were purchased by themselves for rifles, blankets, &c.; but the children say they have never lived with the Indians at all. The Mormons claimed of Dr. Forney sums of money, varying from two hundred to four hundred dollars, for attending them when sick, for feeding and clothing them, and for nourishing the infants from the time when they assumed to have purchased them from the Indians!

Murderers of the parents and despoilers of their property, these Mormons, rather than these relentless, incarnate fiends, dared even to come forward and claim payment for having kept these little ones barely alive; these helpless orphans, whom they, themselves, had already robbed of their natural protectors and supporters! Has there ever been an act which at all equalled this in devilish hardihood, in more than devilish effrontery? Never but one; and even then the price was but "thirty pieces of silver."

On my arrival at Mountain Meadows, the 16th instant, I encamped near the spring where the emigrants had encamped, and where they had intrenched themselves after they were first fired upon. The ditch they there dug is not yet filled up. The same day Captain Reuben P. Campbell, United States Second Dragoons, with a command of three companies of troops came from his camp on the Santa Clara and encamped there also. Judge Cradle-



baugh and Deputy Marshal Rodgers come down from Provo with Captain Campbell, and had been inquiring into the circumstances of the massacre. The judge cannot receive too much praise for the resolute and thorough manner with which he pursues his investigations. On his way down past this spot, and before my arrival, Captain Campbell had caused to be collected and buried the bones of twenty-six of the victims. Dr. Brewer informed me that the remains of eighteen were buried in one grave, twelve in another, and six in another. On the 20th instant I took a wagon and a party of men, and made a thorough search for others among the sage bushes for at least a mile back from the road that leads to Hamblin's house. Hamblin himself showed Sergeant Fritz, of my party, a spot on the right-hand side of the road where he had partially covered up a great many of the bones. These were collected, and a large number of others on the left-hand side of the road up to the slope of the hill, and in the ravines, and among the bushes, I gathered many of the disjointed bones of thirty-four persons. The number could be easily told by the number of pairs of shoulder-blades, and by lower jaws, skulls, and parts of skulls, &c., &c. These, with the remains of two others gotten in a ravine to the east of the spring, where they had been interred at but little depth, thirty-four in all, I buried in a grave on the northern side of the ditch. Around and above this grave I caused to be built, of loose granite stones, hauled from the neighboring hills, a rude monument, conical in form, and fifty feet in circumference at the base, and twelve feet in height. This is surmounted by a cross, hewn from red cedar wood. From the ground to the top of the cross is twenty-four feet. On the transverse part of the cross, facing the north, is an inscription carved deeply in the wood: "*Vengeance is mine: I will repay, saith the Lord.*" And on a rude slab of granite, set in the earth and leaning against the northern base of the monument there are cut in the following words: "*Here one hundred and twenty men, women, and children were massacred in cold blood, early in September, 1857. They were from Arkansas.*"

I observed that nearly every skull I saw had been shot through with rifle or revolver bullets. I did not see one that had been "broken in with stones." Dr. Brewer showed me one, that probably of a boy of eighteen, which had been fractured and split doubtless by two blows of a bowie knife or other instrument of that character. I saw several bones of what must have been very small children. Dr. Brewer says from what he saw he thinks some infants were butchered. The mothers doubtless had these in their arms, and the same shot or blow may have deprived both of life.

The scene of the massacre, even at this late day, was horrible to look upon. Women's hair in detached locks and in masses hung to the sage bushes and was strewn over the ground in many places. Parts of little children's dresses and of female costume dangled from the shrubbery, or lay scattered about, and among these, here and there on every hand, for at least a mile in the direction of the road, by two miles east and west, there gleamed, bleached white by the weather, the skulls and other bones of those who had suffered. A glance into the wagon, when all these had been collected, revealed a sight which never can be forgotten.

The idea of the melancholy procession of that great number of women and children, followed at a distance by their husbands and brothers, after all their suffering, their watching, their anxiety and grief, for so many gloomy days and dismal nights at the corral; thus moving slowly and sadly on up to the point where the Mormons and Indians lay in wait to murder them; these doomed and unhappy people literally going to their funeral; the chill shadows of night closing darkly around them—sad precursors of the approaching shadows of a deeper night—brings to the mind a picture of human suffering and wretchedness on the one hand, and of human treachery and ferocity upon the other, that cannot possibly be excelled by any other scene that ever before occurred in real life.

I caused the distance to be measured from point to point on the scenes of this massacre. From the ditch near the spring to the point up on the road where they were attacked and destroyed, and where their bones were mostly found, is one mile, five hundred and sixty-five yards. Here there is a grave where Captain Campbell's command buried some of the remains. To the next point, also marked by a similar grave made by Captain Campbell, and where the women and children were butchered, a point identified from their bones and clothing having been found near it, is one mile, one thousand one hundred and thirty-five yards. To the swell across the valley called the rim of the basin is one mile, one thousand three hundred and thirty-four yards. To Hamblin's house, four miles, one thousand and forty nine-yards.

Major Henry Prince, United States Army, drew a map of the ground about the spring where the intrenchment was dug, and embracing the neighboring hills, behind which the Mormons had cover. On the crests of these hills are still traces of some rude little parapets made of loose stones, and loop-holed for rifles. Marks of bullets shot from the corral are seen upon these stones. I inclose this map, and also a drawing of the monument as it appears looking northward from a point below the spring, and another drawing, giving a near view of the monument. These latter are not so good as I could wish for, but they will serve to give a tolerably correct idea of what they are



intended to represent. They were made by a Mr. Moeller, who has lived many years among the Mormons.

In pursuing the bloody thread which runs throughout this picture of sad realities, the question how this crime, that for hellish atrocity has no parallel in our history, can be adequately punished, often comes up and seeks in vain for an answer. Judge Cradlebaugh says that with Mormon juries the attempt to administer justice in this Territory is simply a ridiculous farce. He believes the Territory ought at once to be put under martial law. This may be the only practicable way in which even partial punishment can be meted out to these Latter Day devils. But how inadequate would be the punishment of a few, even by death, for this crime, which nearly the whole Mormon population, from Brigham Young down, were more or less instrumental in perpetrating. There are other heinous crimes to be punished; besides this, martial law would at best be but a temporary expedient. Crime is found in the footsteps of the Mormons wherever they go, and so the evil must always exist as long as the Mormons themselves may exist. What is their history? What their antecedent? Perhaps the future may be judged by the past. In their infancy as a religious community (!) they settled in Jackson County, Missouri. There in a short time, from the crimes and depredations they committed, they became intolerable to the inhabitants, whose self-preservation compelled them to rise and drive the Mormons out by force of arms. At Nauvoo, again, another experiment was tried with them. The people of Illinois exercised forbearance toward them until it literally "ceased to be a virtue." They were driven thence as they had been from Missouri, but fortunately, *this time* with the loss on their part of those two shallow imposters, but arrant miscreants, the brothers Smith. The United States took no heed of these wholesome lessons taught by Missouri and Illinois. The Mormons were permitted to settle amid the fastnesses of the Rocky Mountains, with a desert on each side, and upon the great thoroughfare between the two oceans. Over this thoroughfare our citizens have hitherto not been able to travel without peril to their lives and property, except, forsooth, Brigham Young pleased to grant them his permission and give them his protection. "He would turn the Indians loose upon them." The expenses of the army in Utah, past, and to come, (figure that,) the massacre at the Mountain Meadows, the unnumbered other crimes which have been, and will yet be committed by this community, are but preliminary gusts of the whirlwinds our government has reaped, and is yet to reap, for the wind it has sown in permitting the Mormons ever to gain foothold within our borders.

They are an ulcer upon the body politic—an ulcer which needs more than cautery to cure. It must have excision—complete and thorough extirpation, before we can ever hope for safety or tranquility. This is no rhetorical phrase, made by a flourish of the pen, but is really what proves to be an earnest and stubborn fact. This brotherhood may be contemplated from any point of view, and but one conclusion can be arrived at concerning it. The Thugs of India were an inoffensive, moral, law-abiding people in comparison.

I have made this a special report, because the information here given, however crude, I thought to be of such grave importance it ought to be put permanently upon record, and deserved to be kept separate and distinct from a report on the ordinary occurrences of a march. Some of the details might perhaps have been omitted. But there has been a great and fearful crime perpetrated, and many of the circumstances connected with it have long been kept most artfully concealed. But few direct rays even now shine in upon the subject. So that however indistinct and unimportant they may at present appear to be, even the faint side-lights given by these details may yet lend assistance in exploring some obscure recess of the matter, where the great truths that should be diligently and persistently sought for may yet be happily discovered.

I have the honor to be, very respectfully, your obedient servant,

JAMES HENRY CARLETON,

*Brevet Major U. S. A., Captain in the First Dragoons.*

Major W. W. MACKALL,

*Assistant Adjutant General, U. S. A., San Francisco, California.*

I certify that the above is a true copy.

E. D. TOWNSEND,

*Assistant Adjutant General.*

ADJUTANT GENERAL'S OFFICE, March 23, 1868.

#### EXHIBIT A.

HISTORIAN'S OFFICE, SALT LAKE CITY,

*February 17, 1868.*

Your letters of January 30 and February 1 were received. You call my attention to a communication of Mr. J. S. Wilson, Commissioner of the Land Office, which was



deposited in my office last fall, calling for information of such amount and variety that was beyond the facilities within our reach.

I now avail myself of the advantages of consulting with members of the legislature from different portions of the Territory, and am especially indebted for information to General W. B. Pace and Hon. Silas S. Smith, who have been on Indian service more or less for years and are familiar with where Indians range.

The inhabitants of Utah invariably came here poor, a large portion of them in debt for their immigration. They are small farmers, occupying from five to fifteen acres of land each, and few are able to extend their operations beyond that amount. The expense in labor of irrigating is in itself considerable, as, with some exceptions, the ground has to be watered by artificial means from two to five times for wheat, oats and barley, and still more for corn and fall crops. This requires a net-work of ditches, generally varying from four to six feet apart, according to the nature of the soil, and with clay land requires to be flooded; and care and skill are necessary in doing this to prevent the ground from "baking," which would materially injure the crop.

Every field has its head ditches, which take the water from the canals. The accompanying reports of the agricultural society as to expense refer only to the canals, without including the expense of spreading the water on the land.

Those lands now occupied are such as could be irrigated with the least expense, and each additional field requires deeper canals and more expensive dams, flumes, and other works. Many of the settlements have already brought into cultivation more land than the amount of water in their streams justify. Some large settlements have been reduced to small ones by the first settlers overrating the capacity of their streams for irrigation. Of this class Cedar City has been reduced from two hundred and fifty families to about seventy; Old Harmony has been abandoned in consequence of the waste of water by conducting it in canals from Kanarab and Ash creek. The evaporation and soakage was so great as to compel the abandonment of the locality after a vast expenditure had been made. E. T. City is another of this class, which has been almost entirely abandoned for want of water for irrigation. Some localities require five times as much water per acre as others. This may be owing to the conglomerate or pudding-stone formation which underlies much of the country.

The proportion of land susceptible of irrigation is comparatively very small. Additional strips of land along the banks of Bear, Weber, Ogden, Jordan, Provo, Spanish Fork, Sevier, and Rio Virgin Rivers may be irrigated at a heavy expense. The Southwest Jordan Irrigation District, recently organized, estimates the cost of irrigating 30,000 acres, in dams, flumes, main canals, gates, and waste weirs, at \$450,000. This is not including the smaller canals for distributing the water to the farms. The valleys of nearly all these rivers are narrow; the bottom lands that can be irrigated are alluvial deposits, and are liable to be washed away.

The inhabitants along the Rio Virgin have suffered the greatest damage from this cause, though the settlements on other streams have been more or less damaged. As a general rule, all the streams as soon as they enter the valleys from the mountains begin to grow smaller from soakage and evaporation incident to the porous soil and dry atmosphere; it is, therefore, necessary to select the plats of ground for cultivation as near the foot of the mountains as possible to find a desirable quality; and the excessive waste of water in the ditches requires that they should be as short as consistent. This accounts for their being from twelve to twenty farmers to every quarter-section of farming land. The only meadows in the country are in those localities where the waters of the streams spread out and sink, or in the vicinity of springs. According to a report of Mr. Rockwood, chairman of a special committee of the Utah legislative assembly for the collection of historical and geographical facts, under date of January 16, 1867, the area of the Territory is 67,375 square miles, or 43,120,000 acres.

According to the report of the agricultural society for 1866 the number of acres cultivated is about 134,000, which is fully one-third of the amount of land that can be irrigated in the Territory without the use of artesian wells, the residue being lakes, inaccessible mountains, barren deserts, alkali and sage plains; but there are localities above the line of cultivation, and in the deserts where cattle may be sustained during summer, but the production of stock must be limited, through the lack of water to produce sufficient forage for their winter sustenance.

The estimated amount of tillable land not yet under cultivation is 268,000 acres, which, at a ratio of six hundred and forty inhabitants to the square mile of irrigated land, the present estimated population, will give support to four hundred and two thousand souls by agriculture.

Several attempts have been made to bore artesian wells, but in no instance has more than four hundred feet been attained, and in every instance the "boulders" and other obstructions were such as to cause their abandonment, for the present, at least. A tract of land on the Jordan, immediately west of Salt Lake City, consisting of about 11,000 acres, has been surveyed into five, ten, and twenty acre lots, taken up by individuals who associated themselves into an irrigation district under the name of the Jordan Irrigating Company. They have been operating upon this tract for ten years,



expending about \$15 per acre, losing a dam and other works, which cost them \$12,000, by a flood, and have not yet succeeded in getting over five hundred acres under proper cultivation; the land requires more water than was anticipated, and an enlargement of all their canals to about four times their present capacity will be necessary to accomplish the work, and all the higher plats of land irrigated throughout the Territory will be at an increased ratio of expense, incurring liability to more disastrous accidents and losses by flood.

During last winter all the dams for irrigation of the bottom lands on the Rio Virgin have been swept out by flood, and in this locality materials are hard to be obtained to replace them.

#### TIMBER.

The entire valleys susceptible of cultivation are destitute of timber, with the exception of fringes of willow and dwarf cottonwood on the streams. All the fuel comes from the mountains, from two thousand to five thousand feet above the level of Salt Lake.

In many settlements it requires three days to bring home a load of wood, and any that can do so in one consider themselves highly favored, the price varying in Salt Lake City from \$15 to \$20 per cord, and the wood of poor quality for fuel.

Timber is found in streaks along the mountain gorges or cañons, varying from one to forty rods wide. Near the snow-line are found small groves of aspen, fir, and red pine; the oak and maple of the country are dwarf varieties, and but little is found. I have never seen the spot where a section of good timber could be surveyed in a square.

In some localities scrub cedar and nut pine are found on the sides of the mountains; their growth, however, is always short and scattering, a post eight feet long being hard to obtain.

The sides and tops of the mountains, as a rule, are bare of timber, the exception being near the snow-line and along the streams.

#### MINERAL RESOURCES.

In the county of Iron, Centre Creek Cañon, there are mines of alum and copperas, which, doubtless, might be worked to advantage; in Coal Creek Cañon, eight miles above, and southeast of Cedar City, there are veins of bituminous coal; about twelve miles southeast of Cedar City there are large quantities of magnetic iron ore.

In Little Creek Cañon, about five miles from Paraligoonon, are also beds of rich iron ore. The dust of the country contains iron rust in such quantities as to color the ground, and this gave rise to the name of the county.

In Beaver County, about four miles north of Minersville, are mines of lead, which are being worked; there are also copper and iron in the same vicinity, and near Adamsville is iron ore.

In the county of San Pete, about four miles west of Moroni, are veins of bituminous coal, which have been worked, and coal hauled to Salt Lake City, about one hundred and thirty miles, for use of blacksmiths.

In the county of Summit, about fifty miles north of east from Salt Lake City, are several veins of lignite or brown coal, which are being worked, and supply this city with fuel; but its quality is not suitable for blacksmith work. Near Sulphur Creek, in Summit County, about seven thousand feet above the level of the sea, is petroleum.

In Tooele County, near Stockton, are mines of lead. In Bingham Cañon, Salt Lake County, are mines of lead and copper; and a few specimens of gold have been discovered.

During the three years that General Conner was stationed here with the California and Nevada volunteers, a large portion of the men, being miners, were employed in prospecting through the entire Territory for gold and silver, but I have not learned that anything has been discovered that will pay for working, though it is said silver has been found in Little Cottonwood Cañon, in this county.

It is also said that large sums have been obtained from unsuspecting companies and individuals at a distance, in the anticipation of opening valuable mines of gold and silver at Stockton, Bingham Cañon, and Little Cottonwood.

#### ESTIMATED VALUE OF PRODUCTS.

My estimates, based upon the reports of the agricultural society and other sources of information, are, for 1866, \$4,500,000; for 1867, \$3,300,000. The difference is on account of the ravages of grasshoppers and the abandonment of settlements in consequence of the Indian war in the southern counties.

GEORGE A. SMITH.

HON. W. H. HOOPER.



## EXHIBIT B.

*Statistics of population, towns, villages, and productive industry of Utah Territory.*

Counties.	Villages.	Post offices.	Grist-mills.	Saw-mills.	Population.
Rich .....	6	4	1	1	2,000
Cache .....	12	12	6	10	10,000
Box Elder .....	3	3	2	3	4,000
Weber .....	4	6	4	8	6,000
Davis .....	5	5	4	6	5,000
Morgan .....	3	4	1	2	2,000
Summit .....	2	3	2	3	2,000
Wasatch .....	2	2	1	1	2,000
Salt Lake .....	6	6	8	12	23,000
Tooele .....	3	3	1	4	4,000
Utah .....	11	11	9	10	12,000
Juab .....	1	3	2	4	3,000
San Pete .....	9	9	4	6	8,000
Millard .....	4	5	2	4	5,000
Beaver .....	3	3	2	2	4,000
Iron .....	4	4	2	4	4,000
Washington .....	6	10	3	6	7,000
Kane .....	2	2	1	2	3,000
	86	95	55	88	108,000

## EXHIBIT C.

*Statistics of agriculture of Utah Territory.*

The annexed statement on agriculture, taken from the annual message of Governor Durkee, session 1866, gives the following statistics. I regret I have not his message accompanying reports of session 1867:

Number of acres of wheat, 1866 .....	55,553
Number of acres of barley .....	4,681
Number of acres of oats .....	11,631
Number of acres of corn .....	9,502
Number of acres of tame grass .....	65,044
Number of acres of small crops .....	2,421
Number of acres of sorghum .....	2,889
Number of acres of roots .....	5,291
Number of acres of apples .....	717
Number of acres of peaches .....	962
Number of acres of grapes .....	177
Number of acres of cotton .....	551

## EXHIBIT D.

*Factories, &c.*

Three woolen factories, three cotton factories, some twenty tanneries, three theaters, one hundred churches and places of worship, one iron factory, one brass factory, one paper-mill, and one nail factory, three daily papers, and one weekly.

Schools and school-houses .....	164
School-teachers .....	225
Children between the ages of four and sixteen .....	18,183
Children enrolled at school .....	9,849

Subsequent to this report, 1866, the Territory has taken steps for advancing education in a higher grade; appropriations have been made for the benefit of the Deseret University.



EXHIBIT E.

*Appropriations made by the legislature of Utah for the following purposes, session 1867-'68:*

Roads and bridges .....	\$29,082 31
Indian wars.....	13,986 25
Education .....	10,700 00
Penitentiary .....	3,800 00
Incidentals .....	1,381 99
Judiciary. ....	1,299 10
Salaries to officials .....	3,350 00

EXHIBIT F.

TREASURY DEPARTMENT, OFFICE OF INTERNAL REVENUE,  
*Washington, June 24, 1868.*

SIR: In accordance with your request of the 23d instant, I herewith transmit you a statement showing the total collections returned by the collector from the Territory of Utah for the fiscal years 1866, 1867, and the first ten months of the fiscal year 1868.

Very respectfully,

E. A. ROLLINS, *Commissioner.*

Hon. W. H. HOOPER,  
*House of Representatives, Washington, D. C.*

*Statement showing the total collections returned by the collector from the Territory of Utah, for the fiscal years ending June 30, 1866, 1867, and the first ten months of the fiscal year 1868.*

Collections for the fiscal year 1866.....	\$61,720 46
Collections for the fiscal year 1867.....	64,296 34
Collections for ten months of 1868.....	41,855 04
Total.....	<u>167,871 84</u>

TREASURY DEPARTMENT, OFFICE OF INTERNAL REVENUE,  
*Washington, June 24, 1868.*

EXHIBIT J.

*Statistics of irrigation, &c.*

Number of canals, main.....	277
Number of miles .....	1,043
Mean width.....	5 feet 3 in.
Mean depth.....	2 feet 2 in.
Number of acres watered .....	153,949
Cost of canals .....	\$1,766,939
Estimated cost of canals in course of construction .....	\$900,000

The above taken from report, Deseret Agricultural Society, January 11, 1866.

See J. Ross Browne's report, Mineral Resources of the United States, 1868, pages 482 to 487.

EXHIBIT H.

*Statement of sitting delegate.*

SIR: In compliance with your verbal request I have attempted to throw together some statistics touching the industrial status of Utah, believing it to be your wish in making the contemplated report to the Committee on Elections to place my Territory as fairly before the country as the facts will warrant. I regret that my health will not enable me to do more than give you a few leading items, showing the growth and devel-



opment of that once far-off and isolated country. Much has been said and printed to the great prejudice of the people known as Mormons; and the opinions of many have been influenced by the general belief, no doubt honestly entertained by some, that hostility to these people originated in their social institutions. But I venture the opinion that the more hostile of their adversaries are not moved by any such considerations, but are ever ready to use the question of polygamy as the surest and strongest appeal to the prejudices of the masses. If polygamy alone was the cause, why were these people driven from Ohio, Missouri, and Illinois? No polygamy existed prior to the first two expulsions, and was not openly practiced or known when the last occurred. I apprehend, sir, that the influences which have operated against them in Utah, and particularly those of a late date, grow out of the same cause in the main which expelled them from their former homes, to wit, covetousness—a desire to seize and possess their property. I have ever found an element, though limited in extent, and far from being universal, in the Territory, which was plotting for troops, working for discord, hoping for confusion by harassing the people with threats of what the government would do, intending thereby to drive the people to the committal of some overt act whereby the strong arm of the government of the United States would be brought against them; and I am sorry to say that in some instances officials of the United States, who should have been peace-makers, have loaned themselves to carry out the purposes of designing men. The people of Utah, ever conscious of the desire to do right, yet human and weak, have become so accustomed to be maligned, and have so frequently had the deaf ear turned to their complaints, that doubtlessly they may have remained silent at times when charges have been made, and when it would have been better to have spoken out. Now and then men not Mormons have arisen above popular prejudice, and have dared to vindicate, though mildly, these people from the assaults made upon them. I have upon my mind the official report of Captain Howard Stansberry, who, with Lieutenant Gunnison, surveyed the Great Salt Lake, and spent a year or more with the people, in the infancy of their colony. I invite your attention to his remarks about these people. Also the work of Hepworth Dixon, styled "New America;" and to a lecture of Colonel Thomas Kane, before the Historical Society of Philadelphia. I think in the work of Lieutenant Gunnison you will find much said in vindication of the Mormons.

But, sir, the strong reliance which the people of Utah have is in their acts and works. I think you will concede that crime and industry are not companions of long duration. Crime in all its forms takes the idler or the non-producer. The Mormons as a people have never been charged with indolence; they have never accepted of occupations that lead to lives of venture, like mining and other precarious pursuits, which would be more congenial to that class in which enemies of these people have attempted to place them. They are sober, industrious, and thriving. Their towns are admitted to be well regulated, and free from the objections which more or less characterize places of equal size out of Utah. I will now very briefly notice what they have done; for they alone have built up the Territory from a desert waste, which twenty years ago was one thousand two hundred miles from either settlements or navigable rivers, to what is now claimed to be a flourishing young state, containing one hundred thousand inhabitants, with a territorial extension of seventy-five thousand square miles, dotted with over eighty-six flourishing towns and cities, with near one hundred post offices, and with her one hundred and forty-three grist and saw-mills, three cotton and three woolen factories; her twenty-five tanneries; her manufactories of shoes, hats, wagons, furniture, nails, and many other branches of the mechanic arts; her three theaters—one equal in size and grandeur to those of the older States; her one hundred churches and places of worship; her one hundred and twenty school-houses; her splendid places of business and her comfortable residences; her expensive system of roads to the mountains, leading to the timber, growing only on the snow-capped peaks; her bridges and ordinary roads in good repair; her thorough system of agriculture and horticulture, based upon a thorough and expensive system of irrigation; her vineyards; her fields of cotton, indigo, and madder; her sheep-folds, cattle, and horses; and, above all, her eighteen thousand children between the ages of four and sixteen years—one-half of which are in school. I think these facts show conclusively that the charge against the Mormons of being a wicked, licentious people, is without foundation, and the facts themselves should receive at your hands that indorsement which would be but simple justice to these people, and which would place them before the country in a light which would tend greatly to modify the popular prejudice which exists against them.

It is charged that the Mormons have been guilty of harsh expressions. Doubtless much has been said that wisdom would have left unsaid; but where are the human beings on earth who have not feelings of resentment? The Mormons left their old homes in the States, feeling that they had been wronged, grossly; yea, robbed, and many of their kindred murdered. They sought a new home, where they could at least live in peace and worship according to their own dictates. With this stern resolve they crossed Iowa, then a wilderness, (1845,) but being poorly clad and badly provisioned, many sickened and died. From time to time they marked their route of



travel with the grave of some dear one who fell a victim to disease, contracted through destitution and suffering upon the banks of the Mississippi. Finally, the beginning of winter found them encamped on the banks of the Missouri, in what was then called the Pottawatomie country. Here they wintered, laying out the town now known as Council Bluffs. In the spring of 1847, when preparing to send forth their pioneers to seek out a home and a route thereto, the government called upon the Mormons for five hundred men to aid in vindicating her honor in the conflict with Mexico. These men, at great sacrifice and serious inconvenience, answered to the call, and volunteered. They made the march across the continent under St. George Cooke; were honorably discharged in Southern California the following year, and returning eastward, found their families in the great basin of the Salt Lake. The advanced guard or pioneers, who numbered some one hundred and fifty men, reached Salt Lake Valley on July 24, 1847; selected the present site of Salt Lake City; built a fort of some strength, and planted some roots, a portion of which partially matured. A few of these pioneers, under the lead of President Young, returned to the Missouri River the same fall, leaving a large majority of the pioneers at the lake to plough and plant during the following season. I will remark that a portion of the subsistence of these people during the winter and ensuing year was principally a sago or root shown them by the Indians as an element which would sustain life. The small quantity of cereals and roots which they had carried with them could not be spared for food, but were saved for future seed and crops. The effort required to enable the pioneers to transport their seed-grain and vegetables, with a few crude farming implements, prevented the transportation of food for themselves. No white man, save Colonel James Bridger, a trapper at Fort Bridger, and a mountaineer by the name of Goodyear, was found in the country; consequently the few hardy pioneers—numbering less than one hundred and fifty, planting and preparing for the emigration of the next season—found themselves masters of the country, their only neighbors being the wild and degraded Utah and Shoshone Indians, whose friendship was courted to secure peace, and which policy has ever been continued and found to be wise.

The opinion of Colonel Bridger was expressed to the effect that grain could not be raised in that country, and that the people must starve if they emigrated to the "great basin." Nevertheless, trusting in the providence of God, they were determined to emigrate, not from choice but from compulsion. They looked to Him, the Giver of all good, to preserve and protect them.

In 1848, when the great bulk of the emigration of that year reached the valley, they found that much had been raised for their sustenance, and yet quite a percentage of the crops held over for seed. Rations of bread and vegetables were issued and enjoyed. The march of 1848 was attended, as may be supposed, with many hardships. The emigrants were weak and without sufficient transportation; they suffered from a scarcity of provisions and from the toil of the journey; great mortality resulted from disease, old age, and other causes, and it was said that the trail of the Mormons could be followed the year after, (1849,) so plainly did the graves of their dead mark the route they had traveled.

It is worthy of note that during the pilgrimage of 1848, of four months' duration, neither the spinning wheel nor the loom ceased to do its work; and there are now in Utah hundreds of yards of goods, in garments and otherwise, that were spun and woven during that journey of one thousand one hundred miles—the heavy wagon and the slow step of the faithful ox giving the opportunity to spin and weave while the train was in motion. The faithful cow which had given her strength in the yoke furnished milk at night to feed the children drawn by her during the day.

Such, sir, are some of the facts and incidents connected with the journey and history of this peculiar people, whose great interests are now, in some measure, intrusted to your keeping; and now to you, sir, as a statesman of our common country, I appeal with confidence to do my constituents justice. Every charge made against them is refuted by the truth of history.

The first printing press ever taken west of the Missouri was taken by the Mormons, and established at Independence in the years 1832-'33. The first printing press in the great basin of the Salt Lake, where to-day are published three daily papers, was taken there by the Mormons. The first flag of the United States unfurled in the great interior, save by government troops or government officials, was raised by the Mormons. Well do I know the spot where the first "liberty pole," as pointed out to me, was raised, and from the top of which first floated the stars and stripes when yet the country was, as far as known, Mexican territory. As a proof of the Mormons' love of law and order and the institutions of our country, one of the first acts of the people after reaching their new home was to meet in convention and form a government for their guidance, send a delegate to Washington, and ask the parent government to extend her protecting care over them, although three thousand miles away from the capital. The year 1849 blessed the new settlement with an abundant harvest, amply sufficient for themselves with strict economy, and something to spare to the many California emigrants who crowded the plains during that season in their march to the



golden shores. The want of experience on the part of the emigrants on such journeys caused a great loss of stock and much sickness. Many fell by the wayside, and those who succeeded in reaching the "great half-way house," as they styled Salt Lake City, were sadly in need of rest, medical treatment, and good nursing. The ill-health of many forced them to remain for a while, and numerous lives were saved by the careful watching and tender nursing of some good old mother by the bedside of the suffering stranger. Scourvy had also broken out, and for several years Salt Lake City was more or less a hospital during the fall and winter seasons, from disease and accidents incident to a long journey. When emigrants became rested and were able to proceed, they exchanged their broken-down stock for fresh animals, recruited their stock of bread-stuffs, and having relieved themselves from disease by the free use of fresh vegetables, they went on their way rejoicing. Captain Stansberry says in his report that although food was scarce, it was always divided with the stranger, and at prices never extortionate.

It was in the year 1850 that I emigrated to the Territory in company with Ben. Holliday, with whom I was then associated in business. We carried with us a train of merchandise, but found we had been preceded the previous year by Livingston & Kinkead, who were the pioneer merchants of Utah, and not Mormons, and who amassed large fortunes in trade there.

In 1850 there was not a shingle roof in Salt Lake City, a city now containing twenty thousand inhabitants, with its splendid churches, theatres, dwellings, and business houses. It is a remarkable fact that most of the money which has been made, and most of the fortunes which have been realized, in the Territory of Utah, in mercantile pursuits previous to 1863, have been made and realized by those who have not been Mormons; and yet I have never known of a farm being opened, a mill built, and very rarely a house erected in the Territory, by any one not a Mormon. Thus it is shown that the Mormons are entitled to the credit of redeeming from the complete sterility in which they found it the now magnificent valleys of the Salt Lake. The percentage of population other than Mormons never has, in my opinion, exceeded two and a half per cent. of the whole population. I am expecting, sir, to receive, before I close this crude and imperfect report, a statement from the emigrating agent (now in New York) for the present year, showing, as nearly as can be estimated, the whole population emigrated previous to this year, and also during the present season, with the probable cost of outlay.

I am without official data on which to predicate a statement; and yet, fearing I may not receive the expected official report in time, I venture the following estimates, and believe they will be found to be approximately correct. From 1850 to 1867, inclusive, there has been an average annual emigration from Europe of two thousand souls—equal to thirty-six thousand in eighteen years; and from the States of the Union, say twenty-four thousand. I estimate the cost as follows:

From Liverpool to New York, including provisions, 36,000, at \$30 each ...	\$1,080,000
From New York to Missouri, at \$15 each.....	540,000
From Missouri to Salt Lake, at \$75 each.....	2,700,000
Provisions from Missouri to Salt Lake.....	1,350,000
American emigrants, 24,000, at \$110 each, including provisions.....	2,640,000
Grand total.....	<u>8,310,000</u>

The emigration for the present year I place from Europe four thousand souls, at a probable cost, including provisions, at \$100 each from Liverpool to Salt Lake, making \$400,000, which, added, to the above, would give \$8,710,000 as the amount expended for emigration. It may be proper, however, to state that at least one-third of these emigrants have been what we term "independent emigration," having emigrated at their own expense. The fund out of which this gigantic work is successfully accomplished is styled the "perpetual emigrating fund," which has been in organized existence for about twenty years, and is composed of donations, tithes, legacies, and funds drawn from various other sources, both in Europe and America. This fund is kept alive in part by those who have received its benefits repaying, when convenient, the expense incurred in their emigration, in order that others may receive a like benefit. During the present year \$150,000 were contributed to this fund in Salt Lake City alone, to enable others to reach America, and to aid in building up the waste places and to contribute their labor toward the early completion of the great railroad now approaching us both from the east and west. I learn that Governor Young and others have taken large contracts with the Union Pacific Railroad Company, whereby employment is given to thousands of hardy laborers. This great work is soon to be completed, and thus will the people of Utah be brought once more into direct contact with the population of the older sister States of the Union, refuting the false charge that the Mormons are opposed to the construction of this great national highway from which the people anticipate so much good. Already have we constructed five hundred miles of electric telegraph,



linking together our scattered settlements, and affording an opportunity for easy and constant communication.

In referring to the Indian policy of the Territory—that it is cheaper to feed than to fight them—I find that the government of the United States has only paid the small sum of \$75,000 for the suppression of Indian hostilities in Utah since the organization of the Territory, while the Indian wars in Oregon and adjacent States and Territories have cost the the federal treasury millions. The supplies of food and forage which the government has drawn from the settlements of Utah, at nominal prices, have saved many millions to the treasury, a fact which cannot be too highly appreciated while determining the advantage which Utah has been to the government. Another important fact to be borne in mind is the material aid afforded, directly and indirectly, by Utah in developing and settling of California, Nevada, Montana, and Idaho, and enabling the latter Territories, through the supplies drawn from Utah, to work those rich gold and silver mines which have contributed so largely to the national wealth. It is respectfully suggested, sir, that these great steps in the progress of our country have been greatly and much more rapidly advanced through the efficient aid furnished by Utah from her storehouse of supplies. Without her aid, where would have been the overland mail? where the electric wire which now flashes intelligence from ocean to ocean? Nor do I conceive it too much to say that but for the Mormon settlements in Utah, the great Pacific railroad enterprise would to-day have been much further off from completion, and the obstacles to its early opening vastly greater to overcome.

Now, sir, I beg to call your attention to the fact that although the Territory has been settled, as stated, for twenty years, Congress has failed to this day to extend the public land system of the United States to Utah, thus preventing a people who have done so much from availing themselves of the munificent pre-emption and homestead laws enjoyed in the States and other Territories. My constituents have a right to regard such discrimination harsh and unjust, but they are now flattered with the hope that the bill recently passed by the House may be concurred in by the Senate, and rights so long withheld may be awarded them.

It may be well, before passing from the charges against the Mormons, to allude to the one so frequently made, that they do not sufficiently honor the courts of justice. This charge, sir, like the others, is without any foundation in truth. A well-regulated and impartial judiciary is regarded as the very foundation of civil government, and Utah has her system of territorial courts as well as those established by federal government. This charge, it is believed, grows out of the fact that Mormons as a general rule resort to arbitration rather than to litigation for the settlement of disputes. They believe arbitration to be the quickest and cheapest mode of arriving at a result. The courts, however, are open to those who prefer suits at law, and the judgments of these courts are always respected and enforced.

Again, it is charged that Utah contains within her population some bad men—criminals, if you please. This is undoubtedly true, and strange would it be if not true. The geographical position of Utah, places a "frontier" on each of her borders, and thus situated it would be expected that many desperate characters would intrude. Some, doubtless, have assumed the cloak of religion with which to mask their evil purposes, and crime has been committed; but is it just or liberal to hold the whole people of Utah responsible for crimes committed within her borders by a few? Would any one of the old States be willing to be held to such responsibility? The Mormons, as a people, are perfectly willing to be judged of by the rules applied to other civil communities; but to be held responsible as a people for the crimes committed by a few vile characters is no more allowable than it would be for the people of Utah to hold the entire population of the United States responsible for the murders and outrages which have been perpetrated on them. This proposition is so plain that it only need be stated to be assented to by every unprejudiced mind.

I beg to call your attention to the accompanying communication from the Hon. George A. Smith, on the subject of irrigation and agricultural resources of Utah. You will perceive that there are many difficulties incident to a system of irrigation where this system is the only one by which agricultural enterprise can succeed. In Utah it is attended with vast expense and labor, and surely no people would leave the valley of the Mississippi from choice, and with a view of tilling a soil productive only by irrigation.

I also invite your attention to the accompanying statement, marked B, showing the population, towns, counties, mills, &c., within the Territory of Utah. These statistics have been prepared from my personal knowledge of the Territory, and the figures will be found below rather than above what an official report would show could a census now be taken. Also statement C gives the number of acres in grain, grass, fruit, and cotton, amounting to 134,000 acres, as taken from the annual message of Governor Durkee, session 1866. Also statement D, which is a list of factories, public buildings, and schools of the Territory. Also statement E, showing the several amounts appropriated for local purposes in the Territory. Also statement F, showing the revenue collected by the federal government for the years 1866, 1867, and part of 1868.



I regret very much that the last message of Governor Durkee, with accompanying documents, reached me in such a damaged condition that I have been unable to lay them before your committee. I have, however, telegraphed for duplicates to be forwarded, and as soon as they are received, I shall take pleasure in submitting them.

And now, sir, in conclusion, I beg to ask if it is too much to say, in view of the simple statement of facts I have submitted, that it was designed in the providence of God that the little band of despised and persecuted people who fled to the basin of the Great Salt Lake in 1848 should be the humble instruments by which the important events that are now pressing upon this nation should be hastened and secured. The continent has been spanned by an industrious civilization; the oceans have been linked together by a chain of electric wires, soon to be followed by the railroad and steam car; the whole commerce of the world has been revolutionized, and the great current of trade with the East will soon be poured through the very center of our vast empire. These, sir, I claim are but some of the legitimate fruits of Mormon enterprise, courage, industry, and philanthropy; and I ask, is it for these that Utah is now to be condemned?

I have the honor to be, sir, very respectfully, your obedient servant,

W. H. HOOPER,  
*Delegate, Utah.*

Hon. JOHN W. CHANLER.

#### EXHIBIT L.

THE DOCTRINE AND COVENANTS OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS; CAREFULLY SELECTED FROM THE REVELATIONS OF GOD. BY JOSEPH SMITH, PRESIDENT OF SAID CHURCH. THIRD EDITION. NAUVOO, ILLINOIS: PRINTED BY JOHN TAYLOR, 1845.

Entered according to the act of Congress in the year 1845 by N. K. Whitney and George Miller, trustees in trust of the Church of Latter-day Saints, in the clerk's office of the district court of Illinois.

*Lectures on the doctrine of the Church of Jesus Christ of Latter-day Saints, originally delivered before a class of the elders, in Kirtland, Ohio.*

#### LECTURE I.—OF FAITH.

[Page 87.].—THE COVENANTS AND COMMANDMENTS OF THE LORD TO HIS SERVANTS OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS.

SECTION I.—1. Hearken, O ye people of my church, saith the voice of Him who dwells on high, and whose eyes are upon all men; yea, verily, I say, hearken ye people from afar, and ye that are upon the islands of the sea listen together; for verily the voice of the Lord is unto all men, and there is none to escape; and there is no eye that shall not see, neither ear that shall not hear, neither heart that shall not be penetrated; and the rebellious shall be pierced with much sorrow, for their iniquities shall be spoken upon the house-tops, and their secret acts shall be revealed; and the voice of warning shall be unto all people, by the mouths of my disciples whom I have chosen in these last days; and they shall go forth, and none shall stay them, for I the Lord have commanded them.

[Page 89, paragraph 4.] Wherefore I, the Lord, knowing the calamity which should come upon the inhabitants of the earth, called upon my servant, Joseph Smith, jr., and spake unto him from heaven, and gave him commandments, and also gave commandments to others, that they should proclaim these things unto the world; and all this that it might be fulfilled which was written by the prophets: The weak things of the world shall come forth and break down the mighty and strong ones, that man should not counsel his fellow-man, neither trust in the arm of flesh; but that every man might speak in the name of God the Lord, even the Saviour of the world; that faith also might increase in the earth; that mine everlasting covenant might be established; that the fullness of my gospel might be proclaimed by the weak and the simple unto the ends of the world, and before kings and rulers.

[Page 91.].—SECTION II.—1. The rise of the Church of Christ in these last days, being 1830 years since the coming of our Lord and Saviour Jesus Christ in the flesh, it being regularly organized and established agreeably to the laws of our country, by the will and commandments of God, in the fourth month, and on the sixth day of the month which is called April; which commandments were given to Joseph Smith, jr., who was called of God and ordained an apostle of Jesus Christ, to be the first elder of this church; and to Oliver Cowdery, who was also called of God an apostle of Jesus Christ to be the second elder of this church, and ordained under his hand; and this according to the grace of our Lord and Saviour Jesus Christ, to whom be all glory both now and forever. Amen.



2. After it was truly manifested unto this first elder that he had received a remission of his sins, he was entangled again in the vanities of the world; but after repenting, and humbling himself sincerely, through faith, God ministered unto him by an holy angel, whose countenance was a lightning and whose garments were pure and white above all other whiteness, and gave unto him commandments, which inspired him, and gave him power from on high, by means which were before prepared, to translate the book of Mormon, which contains a record of a fallen people, and the fullness of the gospel of Jesus Christ to the Gentiles, and to the Jews also, which was given by inspiration, and is confirmed to others by the ministering of angels, and is declared unto the world by them, proving to the world that the Holy Scriptures are true, and that God does inspire men and call them to His holy work in this age and generation, as well as in generations of old, thereby showing that He is the same God yesterday, to day, and forever. Amen.

3. Therefore, having so great witnesses, by them shall the world be judged, even as many as shall hereafter come to a knowledge of this work; and those who receive it in faith and work righteousness shall receive a crown of eternal life; but those who harden their hearts in unbelief and reject it, it shall turn to their own condemnation, for the Lord God has spoken it; and we, the elders of the church, have heard and bear witness to the words of the Glorious Majesty on high, to whom be glory for ever and ever. Amen.

4. By these things we know that there is a God in heaven who is infinite and eternal, from everlasting to everlasting, the same unchangeable God, the framer of heaven and earth and all things which are in them; and that he created man, male and female, after his own image and in his own likeness created he them, and gave unto them commandments that they should love and serve Him, the only living and true God, and that He should be the only being whom they should worship. But by the transgression of these holy laws man became sensual and devilish, and became fallen man.

5. Wherefore, the Almighty God gave his only begotten Son, as is written in those Scriptures which have been given of Him. He suffered temptations, but gave no heed unto them; he was crucified, died, and rose again the third day, and ascended unto heaven to sit down on the right hand of the Father, to reign with almighty power according to the will of the Father; that as many as would believe and be baptized in his holy name, and endure in faith to the end, should be saved, not only those who believed after he came in the meridian of time in the flesh, but all those from the beginning, even as many as were before he came, who believed in the words of the holy prophets, who spake as they were inspired by the gifts of the Holy Ghost, which beareth record of the Father and of the Son, which Father, Son, and Holy Ghost are one God, infinite and eternal, without end. Amen.

6. And we know that all men must repent and believe on the name of Jesus Christ, and worship the Father in his name, and endure in faith on his name to the end, or they cannot be saved in the kingdom of God. And we know that justification through the grace of our Lord and Saviour Jesus Christ is just and true. And we know also that sanctification through the grace of our Lord and Saviour Jesus Christ is just and true to all those who love and serve God with all their might, mind, and strength. But there is a possibility that man may fall from grace, and depart from the living God. Therefore, let the church take heed, and pray always, lest they fall into temptations; yea, and even let those who are sanctified take heed also. And we know that these things are true and according to the revelations of John, neither adding to nor diminishing from the prophecy of his book, the Holy Scriptures, or the revelations of God which shall come hereafter by the gift and power of the Holy Ghost, the voice of God, or the ministering of angels; and the Lord God has spoken it, and honor, power, and glory be rendered to his holy name, both now and ever. Amen.

7. *And again, by way of commandment to the church concerning the manner of baptism.*

All those who humble themselves before God and desire to be baptized, and come forth with broken hearts and contrite spirits, and witness before the church that they have truly repented of all their sins, and are willing to take upon them the name of Jesus Christ, having a determination to serve him to the end, and truly manifest by their works that they have received of the spirit of Christ unto the remission of their sins, shall be received by baptism into his church.

8. *The duty of the elders, priests, teachers, deacons, and members of the Church of Christ.*

An apostle is an elder, and in his calling to baptize and to ordain other elders, priests, teachers, and deacons, and to administer bread and wine, (the emblems of the flesh and blood of Christ,) and to confirm those who are baptized into the church by the laying on of hands for the baptism of fire and the Holy Ghost, according to the Scriptures; and to teach, expound, exhort, baptize, and watch over the church, and to confirm the church by the laying on of the hands and the giving of the Holy Ghost, and to take the lead of all meetings.

9. The elders are to conduct the meetings as they are led by the Holy Ghost, according to the commandments and revelations of God.

10. The priest's duty is to preach, teach, expound, exhort, and baptize, and adminis-



ter the sacrament, and visit the house of each member and exhort them to pray vocally and in secret, and to attend to all family duties. And he may also ordain other priests, teachers, and deacons. And he is to take the lead of meetings when there is no elder present; but when there is an elder present he is only to preach, teach, expound, exhort, and baptize, and visit the house of each member, exhorting them to pray, vocally and in secret, and attend to all family duties. In all these duties the priest is to assist the elder, if occasion requires.

11. The teacher's duty is to watch over the church always, and be with and strengthen them, and see that there is no iniquity in the church, neither hardness with each other, neither lying, backbiting, nor evil speaking, and see that the Church meet together often, and also see that all the members do their duty; and he is to take the lead of meetings in the absence of elder or priest, and is to be assisted always in all his duties in the church by the deacons, if occasion requires: but neither teachers nor deacons have authority to baptize, administer the sacrament, or lay on hands; they are, however, to warn, expound, exhort, and teach, and invite all to come unto Christ.

12. Every elder, priest, teacher, or deacon is to be ordained to the gifts and callings of God unto him, and he is to be ordained by the power of the Holy Ghost, which is in the one who ordains him.

13. The several elders composing this Church of Christ are to meet in conference once in three months, or, from time to time, as said conferences shall direct or appoint; and said conferences are to do whatever church business is necessary to be done at the time.

14. The elders are to receive their licenses from other elders, by vote of the church to which they belong, or from the conferences.

15. Each priest, teacher, or deacon who is ordained by a priest, may take a certificate from him at the time, which certificate, when presented to an elder, shall entitle him to a license, which shall authorize him to perform the duties of his calling, or he may receive it from a conference.

16. No person is to be ordained to any office in this church, where there is a regularly-organized branch of the same, without the vote of that church; but the presiding elders, traveling bishops, high counsellors, high priests, and elders may have the privilege of ordaining where there is no branch of the church, that a vote may be called.

17. Every president of the high priesthood, (or presiding elder,) bishop, high counselor, and high priest, is to be ordained by the direction of a high council or general conference.

18. *The duty of the members after they are received by baptism.*

The elders or priests are to have a sufficient time to expound all things concerning the church of Christ to their understanding, previous to their partaking of the sacrament, and being confirmed by the laying on of the hands of the elders, so that all things may be done in order. And the members shall manifest before the church, and also before the elders, by a godly walk and conversation, that they are worthy of it; that there may be works and faith agreeable to the Holy Scriptures—walking in holiness before the Lord.

19. Every member of the church of Christ having children is to bring them unto the elders before the church, who are to lay their hands upon them in the name of Jesus Christ, and bless them in his name.

20. No one can be received into the church of Christ unless he has arrived unto the years of accountability before God, and is capable of repentance.

21. Baptism is to be administered in the following manner unto all those who repent: The person who is called of God and has authority from Jesus Christ to baptize, shall go down into the water with the person who has presented him or herself for baptism, and shall say, calling him or her by name: Having been commissioned of Jesus Christ, I baptize you in the name of the Father, and of the Son, and of the Holy Ghost. Amen. Then shall he immerse him or her in the water, and come forth again out of the water.

22. It is expedient that the church meet together often to partake of bread and wine in remembrance of the Lord Jesus; and the elder or priest shall administer it; and after this manner shall he administer it: he shall kneel with the church and call upon the Father in solemn prayer, saying: O God, the Eternal Father, we ask Thee in the name of Thy Son Jesus Christ to bless and sanctify this bread to the souls of all those who partake of it, that they may eat in remembrance of the body of Thy Son, and witness unto Thee, O God, the Eternal Father, that they are willing to take upon them the name of Thy Son, and always remember Him and keep His commandments which He has given them, that they may always have His spirit to be with them. Amen.

23. The manner of administering the wine: he shall take the cup also, and say: O God, the Eternal Father, we ask of Thee in the name of Thy Son Jesus Christ to bless and sanctify this wine to the souls of all those who drink of it, that that they may do it in remembrance of the blood of Thy Son which was shed for them, that they may witness unto Thee, O God, the Eternal Father, that they do always remember Him, that they may have His spirit to be with them. Amen.



24. Any member of the church of Christ transgressing or being overtaken in a fault, shall be dealt with as the Scriptures direct.

25. It shall be the duty of the several churches composing the church of Christ to send one or more of their teachers to attend the several conferences held by the elders of the church, with a list of the names of the several members uniting themselves with the church since the last conference, or send by the hand of some priest, so that some regular list of all the names of the whole church may be kept in a book, by one of the elders, whoever the other elders shall appoint from time to time; and also, if any have been expelled from the church, so that their names may be blotted out of the general church record of names.

26. All members removing from the church where they reside, if going to a church where they are not known, make take a letter certifying that they are regular members and in good standing, which certificate may be signed by any elder or priest, if the member receiving the letter is personally acquainted with the elder or priest, or it may be signed by the teachers or deacons of the church. \* \* \*

[Page 430.] SECTION CVII.—*Revelation given at Far West, Missouri, July 8, 1838.*

In answer to the question, O Lord, shew unto Thy servants how much Thou requirest of the properties of Thy people for a tithing?

1. Verily thus saith the Lord, I require all their surplus property to be put into the hands of the bishop of my church of Zion for the building of mine house, and for the laying of the foundation of Zion, and for the priesthood, and for the debts of the presidency of my church; and this shall be the beginning of the tithing of my people; and after that, those who have thus been tithed shall pay one-tenth of all their interest annually, and this shall be a standing law unto them forever, for my holy priesthood, saith the Lord.

2. Verily I say unto you, it shall come to pass, that all those who gather unto the land of Zion shall be tithed of their surplus properties, and shall observe this law, or they shall not be found worthy to abide among you. And I say unto you, if my people observe not this law, to keep it holy, and by this law sanctify the land of Zion unto me, that my statutes and my judgments may be kept thereon, that it may be most holy, behold, verily I say unto you, it shall not be a land of Zion unto you; and this shall be an example unto all the states of Zion: even so. Amen.

[Page 438.] SECTION CIX.—*Marriage.*

1. According to the custom of all civilized nations, marriage is regulated by laws and ceremonies; therefore we believe that all marriages in this church of Christ or Latter-Day Saints, should be solemnized in a public meeting, or feast, prepared for the purpose. \* \* \*

4. All legal contracts of marriage made before a person is baptized into this church should be held sacred and fulfilled. Inasmuch as this church of Christ has been reproached with the crime of fornication and polygamy, we declare that we believe that one man should have one wife; and one woman but one husband, except in case of death, when either is at liberty to marry again.

[Page 175.] SECTION XIV.—*A revelation given February, 1831.*

1. O hearken, ye elders of my church, and give an ear to the words which I shall speak unto you, for behold, verily, verily I say unto you that ye have received a commandment for a law unto my church, through him whom I have appointed unto you to receive commandments and revelations from my hand. And this ye shall know assuredly, that there is none other appointed unto you to receive commandments and revelations until he be taken, if he abide in me.

2. But verily, verily I say unto you that none else shall be appointed unto this gift except it be through him, for if it be taken from him he shall not have power, except to appoint another in his stead, and this shall be a law unto you, that ye receive not the teachings of any that shall come before you as revelations or commandments, and this I give unto you, that you may not be deceived, that you may know they are of me. For verily I say unto you, that he that is ordained of me shall come in at the gate, and be ordained as I have told you before, to teach those revelations which you have received, and shall receive through him whom I have appointed.

3. And now behold I give unto you a commandment, that when ye are assembled together ye shall instruct and edify each other, that ye may know how to act and direct my church, how to act upon the points of my law and commandments, which I have given, and thus ye shall become instructed in the law of my church, and be sanctified by that which you have received, and ye shall bind yourselves to act in all holiness before me, that inasmuch as ye do this, glory shall be added to the kingdom which ye have received. Purge ye out the iniquity which is among you, sanctify yourselves



before me, and if ye desire the glories of the kingdom appoint ye my servant, Joseph Smith, jr., and uphold him before me by the prayer of faith. And again, I say unto you, that if ye desire the mysteries of the kingdom, provide for him food, and raiment, and whatsoever thing he needeth to accomplish the work wherewith I have commanded him, and if ye do it not he shall remain unto them that have received him, and if ye received him, that I may reserve unto myself a pure people before me.

4. Again I say, hearken ye elders of my church whom I have appointed, ye are not sent forth to be taught, but to teach the children of men the things which I have put into your hands by the power of my Spirit, and ye are taught from on high; sanctify yourselves, and ye shall be endowed with power that ye may give, even as I have spoken.

5. Hearken ye, for behold the great day of the Lord is nigh at hand. For the day cometh that the Lord shall utter his voice out of heaven, the heavens shall shake and the earth shall tremble, and the trump of God shall sound both long and loud, and shall say to the sleeping nations: Ye saints, arise and live; ye sinners, stay and sleep until I shall call again; wherefore gird up your loins lest ye be found among the wicked. Lift up your voices and spare not. Call upon the nations to repent, both old and young, both bond and free, saying: Prepare yourselves for the great day of the Lord, for if I, who am a man, do lift up my voice and call upon you to repent, and ye hate me, what will ye say when the day cometh when the thunders shall utter their voices from the ends of the earth, speaking to the ears of all that live, saying: Repent and prepare for the great day of the Lord! Yea, and again, when the lightnings shall streak forth from the east unto the west, and shall utter forth their voices unto all that live, and make the ears of all tingle that hear, saying these words: Repent ye, for the great day of the Lord is come!

6. And again, the Lord shall utter his voice out of heaven, saying: Hearken, O ye nations of the earth, and hear the words of that God who made you. O, ye nations of the earth, how often would I have gathered you together as a hen gathered her chickens under her wings, but ye would not! How often have I called upon you by the mouth of my servants, and by the ministering of angels, and by mine own voice, and by the voice of thunderings, and by the voice of lightnings, and by the voice of tempests, and by the voice of famines and pestilences of every kind, and by the great sound of a trumpet, and by the voice of judgment, and by the voice of glory and honor, and the riches of eternal life, and would have saved you with an everlasting salvation, but ye would not. Behold the day has come when the cup of the wrath of my indignation is full.

7. Behold, verily I say unto you that these are the words of the Lord your God; wherefore labor ye in my vineyard for the last time; for the last time call upon the inhabitants of the earth, for in my own due time will I come upon the earth in judgment, and my people shall be redeemed and shall reign with me on earth; for the great millennial, which I have spoken by the mouth of my servants, shall come; for Satan shall be bound, and when he is loosed again he shall only reign for a little season, and then cometh the end of the earth; and he that liveth in righteousness shall be changed in the twinkling of an eye; and the earth shall pass away so as by fire; and the wicked shall go away into unquenchable fire, and their end no man knoweth on earth, nor ever shall know until they come before me in judgment.

8. Hearken ye to these words; behold I am Jesus Christ, the Saviour of the world. Treasure these things up in your hearts, and let the solemnities of eternity rest upon your minds. Be sober. Keep all my commandments; even so. Amen.

[Page 209.] SECTION XXI.—*Revelation given in Kirtland, September, 1831.*

1. Behold, thus saith the Lord your God unto you. O ye elders of my church, hearken ye, and hear and receive my will concerning you, for verily I say unto you, I will that ye should overcome the world; wherefore I will have compassion upon you. There are those among you who have sinned; but verily I say for this once, for mine own glory and for the salvation of souls, I have forgiven you your sins.

2. I will be merciful unto you, for I have given unto you the kingdom; and the keys of the mysteries of the kingdom shall not be taken from my servant, Joseph Smith, jr., through the means I have appointed, while he liveth, inasmuch as he obeyed mine ordinances. There are those who have sought occasion against him without cause; nevertheless he has sinned, but verily I say unto you, I, the Lord, forgiveth sins unto those who confess their sins before me, and ask forgiveness, who have not sinned unto death. My disciples, in days of old, sought occasion against one another, and forgave not one another in their hearts, and for this evil they were afflicted and sorely chastened; wherefore I say unto you that ye ought to forgive one another, for he that forgiveth not his brother his trespasses standeth condemned before the Lord, for there remaineth in him the greater sin. I, the Lord, will forgive whom I will forgive, but of you it is required to forgive all men; and ye ought to say in your hearts, Let God judge between me and thee, and reward thee according to thy deeds. And he that repenteth not of his sins, and confesseth them not, then ye shall bring him before the church, and



do with him as the Scriptures saith unto you, either by commandment or by revelation. And this ye shall do that God might be glorified, not because ye forgive not, having not compassion, but that ye may be justified in the eyes of the law, that ye may not offend him who is your law-giver.

3. Verily I say for this cause ye shall do these things. Behold, I, the Lord, was angry with him who was my servant, Ezra Booth, and also my servant, Isaac Morley; for they kept not the law, neither the commandments; they sought evil in their hearts, and I, the Lord, withheld my Spirit. They condemned for evil that thing in which there was no evil; nevertheless I have forgiven my servant Isaac Morley; and also my servant Edward Partridge, behold he hath sinned, and Satan seeketh to destroy his soul, but when these things are made known unto them they repent of the evil, and they shall be forgiven.

4. And now verily I say that it is expedient in me that my servant, Sidney Gilbert, after a few weeks should return upon his business and to his agency in the land of Zion, and that which he hath seen and heard may be made known unto my disciples, that they perish not. And for this cause have I spoken these things. And again I say unto you, that my servant Isaac Morley may not be tempted above that which he is able to bear and counsel wrongfully to your hurt, I gave commandment that his farm should be sold. I willed not that my servant Frederick G. Williams should sell his farm, for I, the Lord, willesh to retain a strong hold in the land of Kirtland for the space of five years, in the which I will not overthrow the wicked, that thereby I may save some, and after that day I, the Lord, will not hold any guilty that shall go with an open heart up to the land of Zion, for I, the Lord, requireth the hearts of the children of men.

5. Behold now it is called to-day, (until the coming of the Son of Man,) and verily it is a day of sacrifice, and a day for the tithing of my people; for he that is tithed shall not be burned, (at his coming,) after to-day cometh the burning. This is speaking after the manner of the Lord, for verily I say to-morrow all the proud and they that do wickedly shall be as stubble, and I will burn them up; for I am the Lord of Hosts, and I will not spare any that remaineth in Babylon. Wherefore, if ye believe me, ye will labor while it is called to-day. And it is not meet that my servants, Newel K. Whitney and Sidney Gilbert, should sell their store and their possessions here, for this is not wisdom, until the residue of the church, which remaineth in his place, shall go up unto the land of Zion.

6. Behold it is said in my laws, or forbidden, to get in debt to thine enemies; but behold it is not said at any time that the Lord should not take when he please, and pay as seemeth him good; wherefore, as ye are agents, and ye are on the Lord's errand, and whatever ye do according to the will of the Lord, in the Lord's business, and he hath set you to provide for his saints in these last days, that they may obtain an inheritance in the land of Zion; and behold, I the Lord declare unto you, and my words are sure and shall not fail, that they shall obtain it; but all these things must come to pass in their time; wherefore be not weary in well doing, for ye are laying the foundation of a great work. And out of small things proceedeth that which is great.

7. Behold the Lord requireth the heart and a willing mind, and the willing and obedient shall eat the good of the land of Zion in these last days; and the rebellious shall be cut off out of the land of Zion, and shall be sent away and shall not inherit the land; for verily I say that the rebellious are not of the blood of Ephraim; wherefore they shall be plucked out. Behold I, the Lord, have made my church in these last days like unto a judge sitting on an hill, or in a high place, to judge the nations; for it shall come to pass that the inhabitants of Zion shall judge all things pertaining to Zion, and liars and hypocrites shall be proved by them, and they who are not apostles and prophets shall be known.

8. And even the bishop, who is a judge, and his counselors, if they are not faithful in their stewardships, shall be condemned, and others shall be planted in their stead; for behold I say unto you that Zion shall flourish, and the glory of the Lord shall be upon her, and she shall be an ensign unto the people, and there shall come unto her out of every nation under heaven. And the day shall come when the nations of the earth shall tremble because of her, and shall fear because of her terrible ones. The Lord hath spoken it. Amen.

[Page 224.] SECTION XXIX.—*Revelation to Joseph Smith, jr., and Sidney Rigdon, January, 1832. The word of the Lord unto them concerning the elders of the church of the living God, established in the last days, making known the will of the Lord unto the elders, what they shall do until conference.*

1. For verily thus saith the Lord, it is expedient in me that they should continue preaching the gospel, and in exhortation to the churches, in the regions round about until conference; and then behold it shall be made known unto them, by the voice of the conference, their several missions.

2. Now verily I say unto you, my servants, Joseph Smith, jr., and Sidney Rigdon,



saith the Lord, it is expedient to translate again, and inasmuch as it is practicable, to preach in the regions round about until conference, and after that, it is expedient to continue the work of translation until it be finished. And let this be a pattern unto the elders until further knowledge, even as it is written. Now I give no more unto you at this time. Gird up your loins and be sober; even so. Amen.

[Page 229.] SECTION XXX.—*Revelation to Joseph Smith, jr., given July, 1828, concerning certain manuscripts on the first part of the book of Mormon, which had been taken from the possession of Martin Harris.*

1. The works, and the designs, and the purposes of God, cannot be frustrated; neither can they come to naught, for God doth not walk in crooked paths; neither doth he turn to the right hand nor to the left; neither doth he vary from that which he hath said; therefore his paths are straight and his course is one eternal round.

2. Remember, remember, that it is not the work of God that is frustrated, but the work of man; for although a man may have many revelations and have power to many mighty works, yet, if he boasts in his own strength, and sets at naught the counsels of God, and follows after the dictates of his own will and carnal desires, he must fall and incur the vengeance of a just God upon him.

3. Behold you have been intrusted with these things, but how strict were your commandments; and remember, also, the promises which were made unto you if you did not transgress them; and behold how oft you have transgressed the commandments and the laws of God, and have gone on in the persuasions of men; for behold, you should not have feared man more than God, although men set at naught the counsels of God and despise his words, yet you should have been faithful, and he would have extended his arm and supported you against all the fiery darts of the adversary; and he would have been with you in every time of trouble.

4. Behold thou art Joseph, and thou were chosen to do the work of the Lord, but because of transgression, if thou art not aware thou wilt fall, but remember God is merciful; therefore, repent of that which thou hast done which is contrary to the commandment which I gave you, and thou art still chosen, and art again called to work; except thou do this, thou shalt be delivered up and become as other men, and have no more gift.

5. And when thou deliveredst up that which God had given thee sight and power to translate, thou deliveredst up that which was sacred into the hands of a wicked man, who has set at naught the counsels of God, and has broken the most sacred promises, which were made before God, and has depended upon his own judgment, and boasted in his own wisdom; and this is the reason that thou hast lost thy privileges for a season, for thou hast suffered the counsel of thy director to be trampled upon from the beginning.

6. Nevertheless my work shall go forth, for as inasmuch as the knowledge of the Saviour has come unto the world through the testimony of the Jews, even so shall the knowledge of a Saviour come unto my people; and to the Nephites, and the Jacobites, and the Josephites, and the Toramites, through the testimony of their fathers; and this testimony shall come to the knowledge of the Lamanites, and the Lemuelites, and the Ishmaelites, who dwindled in unbelief because of the iniquity of their fathers, whom the Lord has suffered to destroy their brethren the Nephites, because of their iniquities and their abominations; and for this very purpose are these plates reserved which contain these records, that the promises of the Lord might be fulfilled which he made to his people, and that the Lamanites might come to the knowledge of their fathers, and that they might know the promises of the Lord, and that they may believe the gospel and rely upon the merits of Jesus Christ, and be glorified through faith in his name, and that through their repentance they might be saved. Amen.

[Page 254.] SECTION XLII.—*Revelation given to Oliver Cowdery, David Whitmer, and Martin Harris, June, 1829; given previous to their viewing the plates containing the book of Mormon.*

1. Behold I say unto you that you must rely upon my word, which if you do with full purpose of heart, you shall have a view of the plates, and also of the breastplate, the sword of Laban, the urrim and thummim, which were given to the brother of Jared upon the mount, when he talked with the Lord face to face, and the miraculous directors which were given to Levi while in the wilderness, on the borders of the Red Sea, and it is by your faith that you shall obtain a view of them, even by that faith which was had by the prophets of old.

2. And after you have obtained faith, and have seen them with your eyes, you shall testify of them, by the power of God; and this you shall do that my servant, Joseph Smith, jr., may not be destroyed, that I may bring about my righteous purposes unto the children of men, in this work. And ye shall testify that ye have seen them, even as my servant, Joseph Smith, jr., has seen them; for it is by my power that he has seen them, and it is because he had faith; and he has translated the book, even



that part which I have commanded him, and as your Lord and your God liveth it is true.

3. Wherefore you have received the same power, and the same faith, and the same gift, like unto him; and if you do these last commandments of mine which I have given you, the gates of hell shall not prevail against you, for my grace is sufficient for you, and you shall be lifted up at the last day. And I, Jesus Christ, your Lord and your God, have spoken it unto you, that I might bring about my righteous purposes unto the children of men. Amen.

[Page 265.] SECTION XLVI.—*Revelation to Joseph Smith, jr., given April 6, 1830.*

1. Behold there shall be a record kept among you, and in it thou shalt be called a seer, a translator, a prophet, an apostle of Jesus Christ, an elder of the church, through the will of God the Father, and the grace of your Lord Jesus Christ; being inspired of the Holy Ghost to lay the foundation thereof, and to build it up unto the most holy faith; which church was organized and established in the year of your Lord eighteen hundred and thirty, in the fourth month, and in the sixth day of the month, which is called April.

2. Wherefore, meaning the church, thou shalt give heed unto all his words and commandments which he shall give unto you, as he receiveth them, walking in all holiness before me; for his word ye shall receive, as if from my own mouth, in all patience and faith; for by doing these things, the gates of hell shall not prevail against you; yea, and the Lord God will disperse the powers of darkness from before you, and cause the heavens to shake for your good and his name's glory. For thus said the Lord God, him have I inspired to move the cause of Zion in mighty power for good; and his diligence I know, and his prayers I have heard; yea, his weeping for Zion I have seen; and I will cause that he shall mourn for her no longer, for his days of rejoicing are come unto the remission of his sins, and the manifestations of my blessings upon his works.

3. For behold, I will bless all those who labor in my vineyard with a mighty blessing, and they shall believe on his words, which are given him, through me, by the Comforter, which manifesteth that Jesus was crucified by sinful men for the sins of the world; yea, for the remission of sins unto the contrite heart. Wherefore, it behooveth me that he should be ordained by you, Oliver Cowdery, mine apostle; this being an ordinance unto you, that you are an elder under his hand, he being the first unto you, that you might be an elder unto the church of Christ, bearing my name, and the first preacher of this church unto the church and before the world; yea, before the Gentiles; yea, and thus saith the Lord God, Lo, lo, to the Jews also. Amen.

[Page 288.] SECTION LXIII.—*Revelation to Joseph Smith, jr., and John Whitmer, given to appoint J. Whitmer historian, March, 1831.*

1. Behold, it is expedient in me that my servant John should write and keep a regular history, and assist you, my servant Joseph, in transcribing all things which shall be given you, until he is called to further duties. Again, verily I say unto you, that he can also lift up his voice in meetings whenever it shall be expedient.

2. And again I say unto you, that it shall be appointed unto him to keep the church record and history continually, for Oliver Cowdery I have appointed to another office. Wherefore it shall be given him, inasmuch as he is faithful, by the Comforter, to write these things; even so. Amen.

[Page 292.] SECTION LXVI.—*Revelation given June, 1831, to the elders to go to Missouri.*

1. Behold, thus saith the Lord unto the elders whom he has called and chosen, in the last days, by the voice of His Spirit, saying, I the Lord will make known unto you what I will that ye shall do from this time until the next conference, which shall be held in Missouri, upon the land which I will consecrate unto my people, which are a remnant of Jacob, and them who are heirs according to the covenant.

2. Wherefore, verily I say unto you, let my servant Joseph Smith, jr., and Sidney Rigdon, take their journey, as soon as preparation can be made to leave their homes, and journey to the land of Missouri. And inasmuch as they are faithful unto me, it shall be made known what they shall do; and it shall also, inasmuch as they are faithful, be made known unto them the land of their inheritance. And inasmuch as they are not faithful, they shall be cut off, even as I will, as seemeth me good.

3. And again, verily I say unto you, let my servant Lyman Wight and my servant John Corрил take their journey speedily; and also my servant John Murdock and my servant Hiram Smith take their journey unto the same place, by way of Detroit. And let them journey from thence, preaching the word by the way, saying none other things than that which the prophets and apostles have written and that which is taught them by the Comforter, through the prayer of faith. Let them go two by two, and thus let them preach by the way in every congregation, baptizing by water and the laying on



of hands, by the water's side, for thus saith the Lord, I will cut my work short in righteousness, for the days cometh that I will send forth judgment unto victory. And let my servant Lyman Wight beware, for Satan desireth to sift him as chaff.

4. And behold he that is faithful shall be made ruler over many things. And again, I will give unto you a pattern in all things, that ye may not be deceived, for Satan is abroad in the land, and he goeth forth deceiving the nations; wherefore, he that prayeth, whose spirit is contrite, whose language is meek, and edifieth, the same is of God, if he obey mine ordinances. And again, he that trembleth under my power shall be made strong, and shall bring forth fruits of praise and wisdom, according to the revelations and truths which I have given you.

5. And again, he that is overcome and bringeth not forth fruits, even according to his pattern, ye shall know the spirit in all cases, under the whole heavens. And the days have come, according to men's faith it shall be done unto them. Behold this commandment is given unto all the elders whom I have chosen. And again, verily I say unto you, let my servant Thomas B. March, and my servant Ezra Thayer, take their journey also, preaching the word by the way, unto this same land. And again, let my servant Isaac Morley, and my servant Ezra Booth, take their journey, also a preaching the word by the way unto the same land.

6. And again, let my servants Edward Partridge and Martin Harris take their journey, with my servants Sidney Rigdon and Joseph Smith, jr.; let my servants David Whitmer and Harvy Whitlock also take their journey, and preach by the way unto this same land. Let my servants Parley P. Pratt and Orson Pratt take their journey, and preach by the way, even unto this same land. And let my servants Solomon Hancock and Simeon Carter also take their journey unto this same land, and preach by the way. Let my servants Edson Fuller and Joseph Scott also take their journey. Let my servants Levi Hancock and Zebedee Colsein also take their journey. Let my servants Reynolds Cahoon and Samuel H. Smith also take their journey. Let my servants Wheeler Baldwin and William Carter also take their journey.

7. And let my servants Newel Knight and Selah J. Griffin both be ordained and also take their journey; yea, verily, I say, let all these take their journey unto one place, in their several courses; and one man shall not build upon another's foundation, neither journey in another's track. He that is faithful, the same shall be kept and blessed with much fruit.

8. And again I say unto you, let my servants Joseph Wakefield and Solomon Humphrey take their journey into the eastern lands. Let them labor with their families, declaring none other things than the prophets and apostles, that which they have seen and heard and most assuredly believe, that the prophecies may be fulfilled. In consequence of transgression, let that which was bestowed upon Herman Basset be taken from him, and placed upon the head of Simonds Rider.

9. And again verily I say unto you, let Jared Carter be ordained a priest, and also George James to be ordained a priest. Let the residue of the elders watch over the churches, and declare the word in the regions among them. And let them labor with their own hands, that there be no idolatry nor wickedness practiced. And remember in all things the poor and the needy, the sick and the afflicted, for he that doeth not these things, the same is not my disciple. And, again, let my servants Joseph Smith, jr., and Sidney Rigdon and Edward Partridge take with them a recommend from the church. And let there be one obtained for my servant Oliver Cowdery also, and thus, even as I have said, if ye are faithful, ye shall assemble yourselves together to rejoice upon the land of Missouri, which is the land of your inheritance, which is now the land of your enemies. But, behold, I the Lord will hasten the city in its time, and will crown the faithful with joy and with rejoicing. Behold, I am Jesus Christ the Son of God, and I will lift them up at the last days; even so. Amen.

[Page 394.] *Revelation given to Joseph Smith, January 19, 1841.*

This revelation, comprising fourteen printed pages, contains a large number of instructions to certain persons, ordering them to build houses, open stores, &c.

[Page 444.] SECTION CXI.—*Martyrdom of Joseph Smith and his brother Hyram.*

1. To seal the testimony of this book and the Book of Mormon, we close with the martyrdom of Joseph Smith, the prophet, and Hiram Smith, the patriarch. They were shot in Carthage jail, on the 27th of June, 1844, about 5 o'clock p. m., by an armed mob, painted black, of from one hundred and fifty to two hundred persons. Hiram was shot first, and fell, calmly exclaiming, "I am a dead man!" Joseph leaped from the window, and was shot dead in the attempt, exclaiming, "O Lord, my God!" They were both shot after they were dead in a brutal manner, and both received four balls.

2. John Taylor and Willard Richards, two of the Twelve, were the only persons in the room at the time. The former was wounded in a savage manner with four balls, but has since recovered; the latter, through the promises of God, escaped "without even a hole in his robe."



3. Joseph Smith, the prophet and seer of the Lord, has done more (save Jesus only) for the salvation of men in this world than any other man that ever lived in it. In the short space of twenty years he has brought forth the Book of Mormon, which he translated by the gift and power of God, and has been the means of publishing it on two continents; has sent the fullness of the everlasting gospel which it contained to the four quarters of the earth; has brought forth the revelations and commandments which compose this book of doctrine and covenants, and many other wise documents and instructions for the benefit of the children of men; gathered many thousands of the Latter-Day Saints; founded a great city, and left a fame and name that cannot be slain. He lived great, and he died great in the eyes of God and his people; and, like most of the Lord's anointed in ancient times, has sealed his mission and his works with his own blood, and so has his brother Hiram. In life they were not divided, and in death they were not separated.

4. When Joseph went to Carthage to deliver himself up to the pretended requirements of the law, two or three days previous to his assassination, he said: "I am going like a lamb to the slaughter; but I am calm as a summer's morning; I have a conscience void of offense toward God and toward all men. *I shall die innocent, and it shall yet be said of me, 'He was murdered in cold blood.'*" The same morning after Hiram had made ready to go—shall it be said to the slaughter? yes, for so it was—he read the following paragraph near the close of the fifth chapter of Esther, in the Book of Mormon, and turned down the leaf upon it:

5. "And it came to pass that I prayed unto the Lord that He would give unto the Gentiles grace that they might have charity. And it came to pass that the Lord said unto me, If they have not charity it mattereth not unto you; thou hast been faithful, wherefore thy garments are clean. And because thou hast seen thy weakness thou shalt be made strong, even unto the sitting down in the place which I have prepared in the mansions of my father. And now I, ———, bid farewell unto the Gentiles; yea, and also unto my brethren whom I love, until we shall meet before the judgment-seat of Christ, where all men shall know that my garments are not spotted with your blood." The testators are now dead, and their testament is in force.

6. Hiram Smith was forty-four years old last February, and Joseph Smith was thirty-eight last December, and henceforward their names will be classed among the martyrs of religion; and the reader in every nation will be reminded that the Book of Mormon and this Book of Doctrine and Covenants of the church cost the best blood of the nineteenth century to bring it forth for the salvation of a ruined world; and that if the fire can scathe a green tree for the glory of God, how it will burn up the "dry trees" to purify the vineyard of corruption. They lived for glory; they died for glory; and glory is their eternal reward. From age to age shall their names go down to posterity as gems for the sanctified.

7. They were innocent of any crimes, as they had often been proved before; and were only confined in jail by the conspiracy of traitors and wicked men; and their *innocent blood* on the floor of Carthage jail is a broad seal affixed to Mormonism that cannot be rejected by any court on earth; and their *innocent blood* on the escutcheon of the State of Illinois, with the broken faith of the State, as pledged by the governor, is a witness to the truth of the everlasting gospel that all the world cannot impeach; and their *innocent blood* on the banner of liberty and on the magna charta of the United States is an ambassador for the religion of Jesus Christ that will touch the hearts of honest men among all nations; and their *innocent blood*, with the innocent blood of all the martyrs under the altar that John saw, will cry unto the Lord of Hosts till He avenges that blood on the earth. Amen.

#### EXHIBIT M.

##### CONSTITUTION OF 1638, OF CONNECTICUT.

Forasmuch as it hath pleased the Almighty God, by the wise disposition of His Divine Providence, so to order and dispose of things that we, the inhabitants and residents of Windsor, Hartford, and Weathersfield, are now cohabiting, and dwelling in and upon the river of Connecticut, and the lands thereunto adjoining, and well knowing when a people are gathered together the word of God requires that to maintain the peace and union of such a people there should be an orderly and decent government established according to God, to order and dispose of the affairs of the people at all seasons, as occasion shall require; do therefore associate and conjoin ourselves to be as one public state or commonwealth, and do, for ourselves and our successors, and such as shall be adjoined to us at any time hereafter, enter into combination and confederation together, to maintain and preserve the liberty and purity of the gospel of our Lord Jesus, which we now profess, as also the discipline of the churches, which, according to the truth of the said gospel, is now practiced among us; as also in our civil



affairs to be guided and governed according to such laws, rules, orders, and decrees as shall be made, ordered, and decreed, as follows:

*It is ordered, sentenced, and decreed,* That there shall be yearly two general assemblies or courts; the one the second Thursday in April, the other the second Thursday in September following. The first shall be yearly chosen, from time to time, so many magistrates and other public officers as shall be found requisite, whereof one to be chosen governor for the year ensuing, and until another be chosen, and no other magistrate to be chosen for more than one year: *Provided, always,* There be six chosen besides the governor, which being chosen and sworn according to an oath recorded for that purpose, shall have power to administer justice according to the laws here established, and for want thereof, according to the rule of the word of God. (See Blue Laws of Connecticut, 1638-'39, pp. 11 and 12.)

Forasmuch as the free fruition of such liberties, immunities, privileges, as humanity, civility, and Christianity call for, as due to every man in his place and proportion, without impeachment and infringement, hath ever been and ever will be the tranquillity and stability of the churches and commonwealths; and the denial or deprivation thereof, the disturbance, if not ruin of both:

*It is thereof ordered by this court and authority thereof,* That no man's life shall be taken away; no man's honor of good name shall be stained; no man's person shall be arrested, restrained, banished, dismembered, nor any way punished; no man shall be deprived of his wife or children; no man's goods or estate shall be taken away from him nor any ways indamaged, under color of law, or countenance of authority, unless it be by the virtue or equity of some express law of the country warranting the same, established by a general court and sufficiently published, or in case of the defect of a law, in any particular case, by the word of God. (See Blue Laws of Connecticut, 1638-'39, pp. 18 and 19.)

1. If any man, after legal conviction, shall have or worship any other God but the Lord God, he shall be put to death. (Dent. xiii, 6, xvii, 2: Exodus xxii, 20.)

14. If any man have a stubborn and rebellious son of sufficient years and understanding, viz, sixteen years of age, which will not obey the voice of his father or the voice of his mother, and that when they have chastened him will not hearken unto them, then may his father and mother, being his natural parents, lay hold on him and bring him to the magistrates assembled in court, and testify unto them that their son is stubborn and rebellious, and will not obey their voice and chastisement, but lives in sundry notorious crimes, such a son shall be put to death. (Dent. xxi, 20, 21. See Blue Laws of Connecticut, 1638-'39, pp. 28, 29.)

Forasmuch as the open contempt of God's word, and messengers thereof, is the desolating sin of civil states and churches, and that the preaching of the word by those whom God doth send is the chief ordinary means ordained by God for the converting, edifying, and saving the souls of the elect, through the presence and power of the Holy Ghost thereunto promised; and that the ministry of the word is set up by God in his churches for those holy ends; and according to the respect or contempt of the same, and of those whom God hath set apart for his own work and employment, the weal or woe of all Christian states, is much furthered and promoted:

*It is therefore ordered and decreed,* That if any Christian, so called, within this jurisdiction, shall contemptuously bear himself toward the word preached or the messengers that are called to dispense the same in any congregation, when he doth faithfully execute his service and office therein, according to the will and word of God, either by interrupting him in his preaching or by charging him falsely with an error which he hath not taught in the open face of the church, or, like a son of Korah, cast upon his true doctrine or himself any reproach to the dishonor of the Lord Jesus, who hath sent him, and to the disparagement of that his holy ordinance, and making God's ways contemptible and ridiculous, that every such person or persons, whatsoever censure the church may pass, shall, for the first scandal, be corrected and reprov'd openly by the magistrates at some lecture, and bound to their good behavior; and if a second time they break forth into the like contemptuous carriages, they shall either pay five pounds to the public treasure, or stand two hours openly upon a block or stool four feet high, upon a lecture day, with a paper fixed on his breast written with capital letters, "An open and obstinate contemner of God's holy ordinances," that others may fear and be ashamed of breaking out into the like wickedness.

*It is ordered and decreed by this court and authority thereof,* That wheresoever the ministry of the word is established according to the order of the gospel throughout this jurisdiction, every person shall duly resort and attend thereunto respectively upon the Lord's day, and upon such public meeting, five shillings. All such offenses to be heard and determined by any one magistrate or more, from time to time. (See Blue Laws Conn., 1638-'39, pp. 43, 44.)

Forasmuch as the peace and prosperity of churches and members thereof, as well as civil rights and liberties, are carefully to be maintained:

*It is ordered by this court and decreed,* That the civil authority here established hath power and liberty to see the peace, ordinances, and rules of Christ be observed in every



church according to his word; as, also, to deal with any church member in a way of civil justice, notwithstanding any church relation, office, or interest, so it be done in a civil and not in an ecclesiastical way, nor shall any church censure, degrade, or depose any man from any civil dignity, office, or authority he shall have in the commonwealth. (See Blue Laws Conn., 1838-'39, pp. 44, 45.)

## TOBACCO.

Forasmuch as it is observed that many abuses are crept in and committed by frequent taking of tobacco:

*It is ordered by the authority of this court,* That no person under the age of twenty-one years, nor any other that hath not already accustomed himself to the use thereof, shall take any tobacco until he has brought a certificate, under the hands of some who are approved for knowledge and skill in physic, that it is useful for him; and also that he hath received a license from the court for the same. And for the regulating of those who, either by their former taking it, have, to their own apprehensions, made it necessary to them, or upon due advice are persuaded to the use thereof:

It is ordered that no man within this colony, after the publication hereof, shall take any tobacco publicly in the street, highways, or any barn-yards, or upon training days, in any open places under the penalty of sixpence for each offense against this order in any the particulars thereof, to be paid without gainsaying, upon conviction by the testimony of one witness; that is, without just exception, before any magistrate. And the constables in the several towns are required to make presentment to each particular court of such as they do understand and convict to be transgressors of this order. (See Blue Laws of Connecticut, page 96.)

## EXHIBIT V.

(Copy—errors included.)

LATTER-DAY SAINTS EUROPEAN PRINTING PUBLISHING AND EMIGRATION OFFICE.

42, *Islington, Liverpool*, June 1, 1868.

EWD. G. ALLEN Esqr (*London*).

Mr. George D. Watt reported most of the discourses. All of our reporters are men. The Journal of Discourses are published by and with the consent of the Church Authorities. The reports are made specially for American & English publications. They are published first in Utah in the "Deseret News," a weekly newspaper, & copied. The Journals are circulated both in America & this country & on the Continent, & are usually published semi-monthly at present; making the twelfth Volume now being published.

We also publish the Millennial Star at this office, a copy of which I send by this post

Yours Truly

F. D. RICHARDS  
Wpr M. B. PRESTON.

## EXHIBIT O.

JOURNAL OF DISCOURSES BY BRIGHAM YOUNG, PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, HIS TWO COUNSELORS, THE TWELVE APOSTLES, AND OTHERS. REPORTED BY G. D. WATT, AND HUMBLY DEDICATED TO THE LATTER-DAY SAINTS IN ALL THE WORLD. VOL. 1. LIVERPOOL: PUBLISHED BY F. D. AND S. W. RICHARDS, 15 WILSON STREET. LONDON: LATTER-DAY SAINTS' BOOK DEPOT, 35 IRWIN STREET, CITY. 1854.

## CELESTIAL MARRIAGE.

*A discourse delivered by Elder Orson Pratt, in the tabernacle, Great Salt Lake City, August 29, 1852.*

[Pages 53, 54.] It is quite unexpected to me, brethren and sisters, to be called upon to address you this forenoon; and still more so, to address you upon the principle which has been named, namely, a plurality of wives.

It is rather new ground for me \* \* and it is rather new ground to the inhabitants



of the United States, and not only to them, but to a portion of the inhabitants of Europe; a portion of them have not been in the habit of preaching a doctrine of this description; consequently we shall have to break up new ground.

It is well known, however, to the congregation before me that the Latter-Day Saints have embraced the doctrine of plurality of wives as a part of their religious faith. It is not, as many supposed, a doctrine embraced by them to gratify the carnal lusts and feelings of man; that is not the object of the doctrine.

We shall endeavor to set forth before this enlightened assembly some of the causes why the Almighty has revealed such a doctrine, and why it is considered a part and portion of our religious faith, and I believe that they will not, under our present form of government, (I mean the government of the United States,) try us for treason for believing and practicing our religious notions and ideas. I think, if I am not mistaken, that the Constitution gives the privilege to all the inhabitants of this country of the free exercise of their religious notions, and the freedom of their faith, and the practice of it. Then, if it can be proven to a demonstration that the Latter-Day Saints have actually embraced, as a part and portion of their religion, the doctrine of a plurality of wives, it is constitutional. And should there ever be laws enacted by this government to restrict them from the free exercise of this part of their religion, such laws must be unconstitutional.

[Pages 60, 61.] I think there is only about one-fifth of the population of the globe that believe in the one-wife system; the other four-fifths believe in the doctrine of a plurality of wives. They have handed it down from time immemorial, and are not half so narrow and contracted in their minds as some of the nations of Europe or America, who have done away with the promises and deprived themselves of the blessings of Abraham, Isaac, and Jacob. The nations do not know anything about the blessings of Abraham; and even those who have only one wife cannot get rid of their covetousness, and get their little hearts large enough to share their property with a numerous family. They are so penurious, and so narrow and contracted in their feelings, that they take every possible care not to have their families large. They do not know what is in the future nor what blessings they are depriving themselves of because of the traditions of their fathers. They do not know that a man's posterity in the eternal worlds are to constitute his glory, his kingdom, and dominion.

[Page 64.] But, says one, how have you obtained this information? By new revelation. When was it given, and to whom? It was given to our prophet, seer, and revelator, Joseph Smith, on the 12th day of July, 1843, only about eleven months before he was martyred for the testimony of Jesus.

[Ibid.] Now let us inquire what will become of those individuals who have this law taught unto them in plainness, if they reject it. (A voice in the stand, "They will be damned.") I will tell you: they will be damned, saith the Lord God Almighty in the revelation he has given.

## JOURNAL OF DISCOURSES BY BRIGHAM YOUNG. VOLUME II.

### [Page 75.] THE MARRIAGE RELATIONS.

*A lecture by President Orson Hyde, delivered at the general conference, in the tabernacle, Great Salt Lake City, October 6, 1854.*

[Page 76.] I have heard it remarked sometimes, by individuals, who were not identified or connected with our church, that if they could only be convinced that polygamy was true they would become Mormons at once.

[Page 78.] That we do not wish to sustain our own position upon the corruptions of others, our own position, as it is in the mind and revelations of God. God forbid that our faith should be founded upon the corruptions of the world. Our faith is founded upon the purity of the world for life, and there let it be grounded.

[Page 79.] When God said, go forth and replenish the earth, it was to replenish the inhabitants of the human species, and make it as it was before. Our first parents, then, were commanded to multiply and replenish the earth, and if the Savior found it his duty to be baptized to fulfil all righteousness, a command of far less importance than that of multiplying his race, (if, indeed, there is any difference in the commandments of Jehovah, for they are all important and all essential,) would he not find it his duty to join in with the rest of the faithful ones in replenishing the earth?

"Mr. Hyde, do you really wish to imply that the immaculate Savior begat children? It is a blasphemous assertion against the purity of the Savior's life, to say the least of it. The holy aspirations that ever ascended from him to his Father would never allow him to have any such fleshly and carnal connections; never—no, never!" This is the general idea; but the Savior never thought it beneath him to obey the mandate of his Father; he never thought this stooping beneath his dignity; he never despised



what God had made, for they are bone of his bone and flesh of his flesh; kindred spirits that once basked in rays of immortality and eternal life. When he found them clothed upon and surrounded with the weakness of mortal flesh, would he despise them? No! it is true I have seen men who became poor and miserable all at once, and then those who were their friends in the days of their prosperity turn from them, and scarcely deign to bestow them a look, it being too humiliating to associate with them in their poverty. But it was not so with the Savior; he associated with them in other spheres, and when they came here, descending below all things, he did not despise to associate with these same kindred spirits. "Then you really mean to hold to the doctrine that the Savior of the world was married; do you mean to be understood so? And if so, do you mean to be understood that he had more than one wife?"

The Christian world by their prejudices have driven us away from the old Bible, so we must now appeal to the New Testament, for that seems to suit the prejudices of the people; though to me it is all alike, both the Old and the New Testaments, for the scribe that is well instructed brings out of his treasury things both new and old. This is my treasury, or rather it is one of my treasures, and what I cannot find there I trust will come down from on high and lodge in my heart.

[Page 81.] How was it with Mary and Martha, and other women that followed him? In old times, and it is common in this day, the women, even as Sarah, called their husbands lord. The word lord is tantamount to husband in some languages; master, lord, husband, are about synonymous. In England we frequently hear the wife say, "Where is my master?" She does not mean a tyrant; but as Sarah called her husband lord, she designates hers by the word master. When Mary of old came to the sepulchre on the first day of the week, instead of finding Jesus she saw two angels in white, "And they say unto her, Woman, why weepest thou? She said unto them because they have taken away my lord," or husband, "and I know not where they have laid him. And when she had thus said, she turned herself back, and saw Jesus standing, and knew not that it was Jesus. Jesus said unto her, Woman, why weepest thou? whom seekest thou? She, supposing him to be the gardener, saith unto him, Sir, if thou hast borne him hence, tell me where thou hast laid him, and I will take him away. Jesus said unto her, Mary! She turned herself, and said unto him, Rabboni, which is to say master." Is there not here manifested the affection of a wife? These words speak the kindred ties and sympathies that are common to the relation of husband and wife. Where will you find a family so nearly allied by the ties of common religion? "Well," you say, "that appears rather plausible, but I want a little more evidence. I want you to find where it says the Savior was actually married."

[Page 82.] We will turn over to the account of the marriage in Cana of Galilee: And the mother of Jesus was there. \* \* \* And when they wanted wine, the mother of Jesus said unto him, They have no wine. And there were set there six water pots of stone, after the manner of the purifying of the Jews, containing two or three firkins apiece. Jesus saith unto them, Fill the water-pots with water; and they filled them up to the brim. And he saith unto them, Draw out now and bear unto the governor of the feast. And they bear it. When the ruler of the feast had tasted the water that was made wine, and knew not whence it was, (but the servants knew,) the governor of the feast saith unto the *bridegroom*: "Every man at the beginning doth set forth good wine; and when men have well drunk then that wine which is worse, but thou hast kept the good wine until now."

Gentlemen, that is as plain as the translators dare allow it to go to the world, but the thing is there; it is told; Jesus was the bridegroom at the marriage of Cana of Galilee, and he told them what to do.

## JOURNAL OF DISCOURSES BY BRIGHAM YOUNG, PRESIDENT, &c. VOLUME III. LIVERPOOL AND LONDON: 1856.

### PLURALITY OF WIVES.

[Remarks made by President Brigham Young, in the Bowery, Provo, July 14, 1855.]

[Page 264.] I have a few words to say concerning one item of doctrine that I seldom think of mentioning before a public congregation. I refer to the doctrine pertaining to raising up a royal priesthood to the name of Israel's God, for which purpose the revelation was given to Joseph concerning the right of faithful elders in taking to themselves more than one wife.

[Ibid.] Suppose that I had the privilege of having only one wife, I should have had only three sons, for those are all that my first wife bore, whereas I now have buried five sons and have thirteen living.

It is obvious that I could not have been blessed with such a family if I had been



restricted to one wife, but by the introduction of this law, I can be the instrument in preparing tabernacles for those spirits which have to come in this dispensation. Under this law, I and my brethren are preparing tabernacles for those spirits which have been preserved to enter into bodies of honor, and be taught the true principles of life and salvation, and those tabernacles will grow up and become mighty in the kingdom of our God.

## EXHIBIT O.

THE MORMON PROPHET AND HIS HAREM; OR AN AUTHENTIC HISTORY OF BRIGHAM YOUNG, HIS NUMEROUS WIVES AND CHILDREN. BY MRS. E. V. WAITE.

[Page 221.] POLYGAMY.

In the first place, is polygamy reasonable or natural? In pursuing this inquiry the first fact that stares us in the face is the equality in the numbers of the male and female sexes in all countries and in all ages of the world. If polygamy were the natural relation between the sexes, the number of females born into the world would far exceed the number of males. So far from that being the case there is a larger number of males, and the excess about equal to the greater loss of life among males by wars and accidents, thus leaving a substantial equality in the numbers of those living.

The following figures will show the number of males and females in the United States at the close of each of the last five decades:

Year.	Males.	Females.	Excess of males.	Per cent. of excess.
1820 .....	4, 898, 127	4, 740, 004	158, 123	3. 2
1830 .....	6, 529, 696	6, 336, 324	193, 372	3. 0
1840 .....	8, 688, 532	8, 380, 921	307, 611	3. 5
1850 .....	11, 837, 665	11, 354, 215	483, 446	4. 1
1860 .....	16, 086, 059	15, 359, 021	727, 038	4. 5

Thus it will be seen that nature has made no provision for the practice of polygamy in this country; on the contrary, there has continually been an excess of the male population. This fact is owing, in part, to the large excess of males in the immigration from foreign countries. Let us pursue this subject a little further. In 1851 the population of Great Britain and Ireland was, males, 13,537,052; females, 14,082,813; excess of females, three per cent. But emigration, and the heavy wars in which that country had been engaged, had been draining off the male population for many years previous.

In Prussia, in 1849, there were then living, males, 8,162,805; females, 8,162,382. The mortality of males is greater than that of females. To compensate for this, more males are born.

In England the excess of male births is five per cent.; in France and Russia six per cent.; in the United States from five to twelve per cent., according to the locality.

If, now, we turn our attention to the Territory of Utah we shall find a similar state of facts. By reference to the United States census of 1850 it will appear that there was, at that time, an excess of males in every county in the Territory, amounting, in the aggregate, to 712; the total number of males being 6,046, and of females, 5,334. The national census of 1860 shows the following result: males, 20,255; females, 20,018.

There has always been in this Territory, as there is in every new country, a scarcity of females. No person, therefore, could take more than one wife without, as a necessary consequence, compelling some other person to live without any.

This subject is placed in a still stronger light by reference to the report of the territorial superintendent of common schools, dated January 14, 1863, and published in the *Deseret News*, vol. xii, No. 31. By that report it appears that the number of boys between the ages of six and eighteen is greater than the number of girls between four and sixteen in every county in the Territory but one. The total, so far as the superintendent has been able to obtain reports, is as follows:

Number of boys between six and eighteen .....	3, 950
Number of girls between four and sixteen .....	3, 662
Showing an excess of boys to the number of .....	288



The thanks of the public are due to Mr. Campbell for bringing to light facts having so important a bearing on this subject.

Thus it will be seen that in this Territory, as well as in all other parts of the country, has nature failed to make any provision for the practice of polygamy. On the contrary, ever true to herself, even now, after polygamy has been practiced over ten years, during which time it has been openly encouraged, nature is re-establishing her own laws, and maintaining the substantial equality in the number of the sexes; thus placing the seal of condemnation on this practice, and saying, in the plainest language, "Let every man have his own wife, and let every woman have her own husband."

[Page 224.] It need scarcely be asked whether this (polygamy) is an evil. Both reason and history answer the question plainly in the affirmative. In all ages of the world the most enlightened and prosperous nations have been those who sought to refine and elevate woman by the practice of monogamy, or the one-wife system. Witness Egypt, Greece, and Rome among the ancient nations, and among the moderns the United States, Great Britain, France, and other European countries.

[Page 227.] In a former chapter the so-called revelation on celestial marriage has been given, and it was there shown that polygamy was an innovation upon the Mormon religion. I desire now to call the attention of the women of Utah to a few observations on the nature of this pretended revelation, and the circumstances under which it was given to the world. It was, even if given as assumed, kept secret for nine years. Polygamy was privately practiced by the leaders of the church for several years, during which time, according to Brigham's admission, it was not "preached by the elders," and was therefore studiously concealed from new converts. Indeed, not only was it "not preached," but it was strongly denounced during the same period. On the 1st of February, 1844, the following notice appeared in the Times and Seasons, the Church organ, published at Nauvoo:

[From the Times and Seasons, vol. v, p. 423.]

"NOTICE.

"As we have lately been credibly informed that an elder of the Church of Jesus Christ of Latter-Day Saints, by the name of Hiram Brown, has been preaching polygamy and other false and corrupt doctrines, in the county of Lapeer, and State of Michigan:

"This is to notify him and the church in general that he has been cut off from the church for his iniquity, and he is further notified to appear at the special conference on the 6th of April next, to make answer to these charges.

"JOSEPH SMITH,  
"HYRAM SMITH,  
in *Presidents of the Church.*"

This was seven months after the time when, according to Brigham Young and his associates, the revelation concerning celestial marriage had been given to Smith. But here both Joseph and Hiram Smith call polygamy a "false and corrupt doctrine." Can any true follower of Smith, or believer in his divine mission, believe for a moment, in the face of this declaration, that Smith had received any revelation on the 12th of July, 1843, sanctioning polygamy?

Again, six weeks later, Hiram Smith wrote as follows:

[From the Times and Seasons, vol. v, p. 474.]

"NAUVOO, March 15, 1844.

"To the brethren of the Church of Jesus Christ of Latter-Day Saints, living on China Creek, in Hancock County, greeting:

"Whereas brother Richard Hewett has called on me to-day to know my views concerning some doctrines that are preached in your place, and states to me that some of your elders say that a man *having a certain priesthood* may have as many wives as he pleases, and that doctrine is taught here, I say unto you that the man teaches *false doctrines*, for there is no such doctrine taught here, neither is there any such thing practiced here; and any man that is found teaching privately or publicly any such doctrine is culpable, and will stand a chance to be brought before the high council, and lose his license and membership also; therefore he had better beware what he is about."

Polygamy was condemned at the general conference of the European churches, in England, during the year 1846, and subsequently.

In July, 1845, Parley P. Pratt, in the "Millennial Star," (vol. vi, p. 22,) published at Liverpool, had denounced the "spiritual-wife doctrine of I. C. Bennett," which was one of the earliest manifestations of polygamy in the church, as a "doctrine of devils," and other "seducing spirits," using this language:

"It is but another name for whoredom, wicked and unlawful connection, and every kind of confusion, corruption, and abomination."



In May, 1848, Orson Spencer, then editor of the "Star," used the following language: "In all ages of the church truth has been turned into a lie, and the grace of God converted into lasciviousness, by men who have sought to make "a gain" of godliness and feed their lusts on the credulity of the righteous and unsuspecting. \* \* \* Next to the long-hackneyed and bugaboo whisperings of polygism, is another abomination that sometimes shows its serpentine crests, which we shall call sexual resurrectionism. \* \* \* The doctrines of corrupt spirits are always in close affinity with each other, whether they consist in spiritual-wifeism, sexual resurrection, gross lasciviousness, as the unavoidable separation of husbands and wives, or the communion of property."—*Millennial Star*, vol. x, p. 137.

In July, 1850, at a discussion at Boulogne, France, John Taylor, a well-known Mormon apostle, when charged with the belief and practice of this doctrine, said:

"We are accused here of polygamy, and actions the most indelicate, obscene, and disgusting, such that none but a corrupt and depraved heart could have contrived. These things are too outrageous to admit of belief. Therefore, leaving the sisters of the "white veil," the "black veil," and all the other veils, with those gentlemen to dispose of, together with their authors, as they think best, I shall content myself by reading our views of chastity and marriage, from a work published by us, containing some of the articles of our faith."—*Taylor's Discussions at Boulogne*, p. 8.

He then read, from the Book of Doctrine and Covenants, the article on marriage, already quoted from.

Here we have the following facts:

In 1830 the Mormon church organized, and the Book of Mormon was published, in which polygamy is strongly condemned.

In 1831, the same doctrine condemned, in a revelation to Joseph Smith, which was afterward published in the Book of Doctrine and Covenants.

In July, 1843, the revelation in favor of polygamy, said to have been given to Joseph Smith.

In February, 1844, polygamy publicly denounced by Joseph and Hiram Smith.

In March, 1844, the same practice again denounced by Hiram Smith.

In June, 1844, the death of Smith.

In 1845, the publication of the article on marriage, in the appendix to the Book of Doctrine and Covenants, in which polygamy is called a "crime," and is again strongly condemned and repudiated. The same year the spiritual-wife doctrine of I. C. Bennett denounced by P. F. Pratt, in England.

In 1846, polygamy condemned at the conferences of the European Mormon churches, in England.

In 1848, "polygamy" and "sexual resurrectionism" severely denounced in the "Millennial Star," published in Liverpool.

In 1850, polygamy denounced and repudiated by Apostle John Taylor, in France.

And yet, in the face of all these facts, in 1852, we have the same doctrine publicly given to the church, accompanied by the announcement that it had been believed and practiced by the church for many years.

Now, it will not be pretended by any one that polygamy was any part of the Mormon religion previous to 1843. Take, then, the period from 1843 to 1852. How was it during those nine years? Which shall we take in evidence of what was the teaching of the Mormon religion on that subject during that time? The Book of Doctrine and Covenants, the notices published by J. & H. Smith, the declarations of Pratt and Spencer, the action of the churches in England, and the assertions of Taylor in France, or the announcement made in Great Salt Lake City in 1852? Are we not, at least, as much authorized to take the former as the latter?

---

#### EXHIBIT P.

NEW AMERICA, BY WILLIAM HEPWORTH DIXON. PHILADELPHIA, J. B. LIPPINCOTT & CO. 1867.

#### CHAPTER XXVII.—*Marriage in Utah.*

But the most singular, the most powerful of these three groups of secular notes, even when we study them from a political point of view only, is that which defines the conditions of family life, particularly in what it has to say of marriage. Marriage lies at the root of society, and the method of dealing with it marks the spirit of every religious system.

Now the new American church puts marriage into the very front of man's duties on earth. Neither man nor woman, says Young, can work out the will of God alone; that is to say, all human beings have a function to discharge on earth, the function of pro-



viding tabernacles of the flesh for immortal spirits now waiting to be born, which cannot be discharged except through that union of the sexes implied in marriage. To evade that function is, according to Young, to evade the most sacred of man's obligations. It is to commit sin. An unwedded man is, in Mormon belief, an imperfect creature; like a bird without wings, a body without soul. Nature is dual; to complete his organization a man must marry a wife. Love, says Young, is the yearning for a higher state of existence, and the passions, properly understood, are the feeders of spiritual life. Looking to this dogma of the duty of wedlock solely as a source of political power, we should have to allow it very great weight. What waste it saves! In many religious bodies marriage is simply tolerated as the lesser form of two dark evils. Those Essenes from whom we derive so much allowed it only to the weak, and on account of weakness they thought it better for a good man to refrain from marriage, and in the higher grades of their society the relation of wife and husband was unknown. Many orders among the Hindoos practice celibacy. The Greeks had their vestal virgins, the Egyptians their anchorites, the Syrians their ascetics. In the Pagan Olympus abstinence was a virtue, praised, if not practiced, by the gods. Hestia and Artemis were honored above all the denizens of heaven, because they rose beyond the reach of love; nay, the idea of marriage, being a kind of corruption, had so sunk into the Pagan mind as to crop out everywhere in the common speech. To be unloved was to be unspotted; to be single was to be pure. In all Pagan poetry the title of virgin is held to be higher than that of mother; nobler than that of wife. Among Christian communities marriage is a theme of endless disputation; one church calling it a sacrament, another calling it a contract; all churches considering it optional, few regarding it as meritorious, many denouncing it as a compromise with the devil. The Greek church encourages celibacy in a class; the Latin prohibits marriage to its priests. The Gothic church may be said to stand neutral, but no church in the world has ever yet come to insist on the duty of marriage as necessary to the living of a true Christian life.

On the contrary, every religious body which has dealt with the topic at all, Greek, Armenian, Coptic, Latin, Abyssinian, declares by facts, no less than by words, that any union of the sexes in the bands of wedlock is hostile to the highest conception of Christian life. Hence the monastic houses; hence the celibacy of priests; institutions which infect the mind of society, arresting the growth of many household virtues, poisoning some of the sources of domestic life. A wifeless priest is a standing protest against wedded love; for if it be true that the human affections are a snare, leading men away from God, it is surely a good man's duty to crush them out. A snare is a snare, a sin is a sin, to be avoided equally by the layman and the priest.

Young has turned the face of his church another way. With him marriage is a duty and a privilege; and the elders, being considered examples to the people in all good works, are enjoined to marry. A priest and elder must be a husband; even among the humbler flock, it is held to be a disgrace, the sign of an unregenerated heart, for a young man to be found leading a single life.

But the saints have pushed the doctrine a step further; for instead of denying to their popes and priests the consolation of women's love, they encourage them to indulge in a plurality of wives, and among their higher clergy, the prophet, the apostles, and the bishops, their indulgence is next to universal. Not to be a pluralist is not to be a good Mormon. My friend, Captain Hooper, though he is known to be rich, zealous, insinuating, and an admirable representative of Utah in Congress, has never been able to rise high in the church, on account of his repugnance to taking another wife. "We look on Hooper," the Apostle Taylor said to me yesterday at dinner, "as only half a Mormon," at which every one laughed in a sly, peculiar way. When the merriment, in which the young ladies joined, had died down, I said to Hooper, "Here's a great chance for you next season; pick out six of the prettiest girls in Salt Lake City, marry them in a batch; carry them to Washington, and open your season in December with a ball." "Well," said Hooper, "I think that would take for a time, but then I am growing to be an old fellow."

Young, who is fond of Hooper, proud of his talents, and conscious of his services, is said to be urging him strongly to marry one more wife at least, so as to cast his lot finally, whether for good or evil, with the polygamous church. If Hooper yields, it will be from a sentiment of duty and fidelity toward his chief.

Every priest of the higher grades in Salt Lake Valley has a plural household; the number of his mates varying with the wealth and character of the elder. No apostle has less than three wives.

Of the marriages of Brigham Young, Heber Kimball, and Daniel Wells, the three members of what is here called the First Presidency, no accounts are kept in the public office. It is the fashion of every pious old lady in this community, who may have lost her husband by death, to implore the bishop of her ward to take measures for getting her sealed to one of these three presidents. Young is, of course, the favorite of such widows; and it is said that he never makes a journey from the Beehive without being called upon to indulge one of these poor creatures in her wish. Hence, a great many women hold the nominal rank of his wife whom he has scarcely ever seen, and with whom



he has never had the relations of a husband, as we in Europe should understand the term. The actual wives of Brigham Young, the women who live in his houses—in the Beehive, in the Lion House, in the White Cottage—who are the mothers of his children, are twelve, or about twelve in number. The queen of all is the first wife, Mary Ann Angell, an aged lady, whose five children—three sons, two daughters—are now grown up. She lives in the White Cottage, the first house ever built in Salt Lake Valley. Joseph and Brigham, her eldest sons, chiefs of their race, are already renowned in missionary labor. Sister Alice, her eldest daughter, is my friend, on the stage. The most famous, perhaps, of these ladies is Eliza Snow, the poetess, a lady universally respected for her fine character, universally applauded for her fine talents; about fifty years old, with silver hair, dark eyes, and noble aspect, simple in attire, calm, lady-like, rather cold. Eliza is the exact reverse to any imaginary lights of the harem. I am led to believe that she is not a wife to Young in the sense of our canon; she is always called Miss Eliza; in fact, the Mormon rite of sealing a woman to a man implies other relations than our Gentile rite of marriage; and it is only by a wide perversion of terms that the female saints who may be sealed to a man are called his wives. Sister Eliza lives in the Lion House, in a pretty room on the second floor, overlooking the Oquirrh Mountains, the valley, the river Jordan, and the Salt Lake; a poet's prospect, in which form and color, sky and land and water, melt and fuse into glory without end. Young's less distinguished partners are: Sister Lucy, by whom he has eight children; sister Clara, by whom he has three children; sister Zina, poetess and teacher, (formerly the wife of Dr. Jacobs,) by whom he has three children; sister Amelia, an old servant of Joseph, by whom he has four children; sister Eliza, (2,) an English girl, (the only English woman in the prophet's house,) by whom he is said to have four or five children; sister Margaret, by whom he has three or four children; sister Emeline, often called the favorite, by whom he has eight children. Young himself tells me that he never has had and never will have a favorite in his house, since desires and preferences of the flesh have no part in the family arrangements of the saints.

The apostles have fewer blessings than the presidents, but twelve are all pluralists. The following figures are supplied to me by George A. Smith, cousin of the prophet Joseph, and historian of the church:

Orson Hyde, first apostle, has four wives.  
 Orson Pratt, second apostle, has four wives.  
 John Taylor, third apostle, has seven wives.  
 Wilford Woodruff, fourth apostle, has three wives.  
 George A. Smith, fifth apostle, has five wives.  
 Amasa Lyman, sixth apostle, has five wives.  
 Ezra Benson, seventh apostle, has four wives.  
 Charles Rich, eighth apostle, has seven wives.  
 Lorenzo Snow, ninth apostle, has four wives.  
 Erastus Snow, tenth apostle, has three wives.  
 Franklin Richards, eleventh apostle, has four wives.  
 George Q. Cannon, twelfth apostle, has three wives.

With the exception of John Taylor, the apostles are considered poor men; and in Salt Lake it is held dishonest for a man to take a new wife unless he can maintain his family in comfort as regards lodging, food, and clothes. Some of the rich merchants are encouraged by Young to add wife on wife. A bold and pushing elder said to me last night, in answer to some banter: "I shall certainly marry again soon. The fact is I mean to rise in this church, and you have seen enough to know that no man has a chance in our society unless he has a big household. To have any weight here you must be known as the husband of three women."

#### CHAPTER XXIX.—*The doctrine of pluralities.*

[Page 213, &c.] But the saints have not simply revived polygamy in Utah. They have returned to that form of domestic life in both its unlimited and its incestuous forms. In their search for the foundations of a new society they have gone back to the times when Abraham was called out of Hauran; undoing the work of all subsequent reformers, setting aside not only all that Mohammed but all that Moses had done for the better regulation of our family life.

[*Ibid.*] We have had a very strange conversation with Young about the Mormon doctrine of incest. I asked him whether it was a common thing among the saints to marry mother and daughter; and if so, on what authority they acted, since that kind of union was not sanctioned either by the command to Moses or by the revelation to Smith. When he hung back from admitting that such a thing occurred at all, I named a case in one of the city wards of which we had obtained some private knowledge. Apostle Cannon said that in such cases the first marriage would be only a form; that the elder female would be understood as being a mother to her husband and his younger bride; on which I named my example, and in which an elder of the church had married an English woman, a widow, with a daughter, then of twelve, in which the



woman had borne four children to this husband, and in which this husband had married her daughter when she came of age.

Young said it was not a common thing at Salt Lake.

"But it does occur?"

"Yes," said Young, "it occurs sometimes."

"On what ground is such a practice justified by the church?"

After a short pause he said, with a faint and wheedling smile: "This is a part of the question of incest. We have no sure light on it yet. I cannot tell you what the church holds to be the actual truth. I can tell you my own opinion, but you must not publish it; you must not tell it, lest I should be misunderstood and blamed." He then made to us a communication on the nature of incest, as he thinks of this offense and judges it; but what he then said I am not at liberty to print.

As to the facts which came under my own eyes I am free to speak. Incest, in the sense in which we use the word—marriage within the proscribed degree—is not regarded as a crime in the Mormon Church. It is known that in some of their saintly harems the female occupants stand to their lords in closer relationship of blood than the American law permits. It is a daily event in Salt Lake City for a man to wed two sisters, pleading the example of Sarah and Abraham, which Young, after some consideration, allowed to be a precedent for his flock. In one household in Utah may be seen the spectacle of three women who stand toward each other in the relation of child, mother, and granddame, living in one man's harem as his wives! I asked the president whether, with his new lights on the virtue of breeding in-and-in, he saw any objection to the marriage of brother and sister. Speaking for himself, not for the church, he said he saw none at all. What follows I give in the actual words of the speaker:

"D. Does that sort of marriage ever take place?"

"Young. Never.

"D. Is it prohibited by the church?"

"Young. No; it is prohibited by prejudice.

"Kimball. Public opinion won't allow it.

"Young. I would not do it myself, nor suffer any one else when I could help it.

"D. Then you don't prohibit it and you don't practice it?"

"Young. My prejudices prevent me."

This remnant of an old feeling brought from the Gentile world, and this alone, would seem to prevent the saints from rushing into the higher forms of incest. How long will these Gentile sentiments remain in force?

"You will find here," said Elder Stenhouse to me, talking on another subject, "polygamists of the third generation. When these boys and girls grow up and marry, you will have in these valleys the true feeling of patriarchal life. The old world is about us yet, and we are always thinking of what people may say in the Scottish hills and midland shires."

---

ACROSS THE CONTINENT: A SUMMER'S JOURNEY TO THE ROCKY MOUNTAINS, THE MORMONS, AND THE PACIFIC STATES, WITH SPEAKER COLFAX. BY SAMUEL BOWLES, EDITOR OF THE SPRINGFIELD (MASSACHUSETTS) REPUBLICAN, SPRINGFIELD, MASSACHUSETTS. SAMUEL BOWLES & CO., 1866.

#### *I.—The Mormons—their present attitude toward the government.*

[Page 391, &c.] Since our visit to Utah, in June, the leaders among the Mormons have repudiated their profession of loyalty to the government, denied any disposition to yield the issue of polygamy, and begun to preach anew and more vigorously than ever disrespect and defiance to the authority of the national government. They seem to be disappointed and irate that their personal attentions and assurances to Mr. Colfax and his friends did not win from them more tolerance of their peculiar institutions, and something like espousal of their desire for admission as a State of the Union. New means are taken to organize and drill the militia of the Territory, and to provide them with arms, under the auspices and authority of the Mormon Church; and an open conflict with the representatives of the government is apparently braved, even threatened. I make these illustrative quotations from speeches and sermons by prominent church leaders during August and September:

*From Heber Kimball, first vice-president of the church.*

"The next army that comes here, I want you women to meet, all armed with brooms and pop-squirts and hot water, to squirt hot water all over 'em. We had a good time with the last army that came here, and I guess we will have it with the next one! Greet them, sisters, with a shower of suds, with even the half of a scissors about eight-



een inches long. And you, brethren, grease your old firelocks; and you, sisters, grease your old firelocks, too. Arm even with cornstalks, everybody. In the 'States' they do it between the ages of eighteen and forty-five; but here, I suppose, we might do so between the ages of ten and one hundred and eighty. Broomsticks and mop-handles, brethren, and pails of hot water, my dear sisters, if you can't do any more. If a dozen of our women were in the South the time of that war, with pails of hot water, they could have licked the northern army.

"We believe what Christ taught—the commandments he gave. He said: 'Thou shalt not interfere with thy neighbor's wife, nor his daughter, his house, nor his manservant, nor his maid-servant.' Christ said this, but our enemies don't believe it. That was the trouble between the North and the South. The abolitionists of the North stole the niggers and caused it all. The nigger was well off and happy. 'How do you know this, brother Heber?' Why, God bless your soul, I used to live in the South and I know! Now they have set the nigger free, and a beautiful thing they have done for him, haven't they? I am what you might call a son of the veterans. My father bled in the Revolution for our liberties. I, his son, have been five times robbed and driven out by Gentile persecutors—I, and my brothers Charles and Samuel. They threaten to come here and destroy us. Let them come; I am the boy to resist them."

*From George A. Smith, another vice-president.*

"He said the Lincoln administration did not want peace with the South, but wanted to destroy and devastate all the good southern people; and, that in order to do so, the party in power had laid aside the Constitution entirely, and were the main ones who rebelled, and the South was right. He said the northern army burned and destroyed everything in the South, and abused, by force, all their women, and said they would be here some day to treat the *fair women* of Utah in like manner; and that all, both old and young, should have plenty of arms, and when they approached God would fight the battles and the saints would be victorious! He said our government was not at peace, and he damned it, and he hoped to see the day when it would sink to hell; that nothing in the shape of a free government could ever stand on North American soil that was opposed to Mormonism and polygamy!"

*From Brigham Young himself.*

"He said if they undertook to try him in a Gentile court he would see the government in hell first, and was ready to fight the government the rub; that he had his soldiers, and rifles, and pistols, and ammunition, and plenty of it, and cannon, too, and would use them. He was on it! The governor of this Territory was useless and could do nothing. He (Brigham) was the real governor of this people, and by power of the Most High he would be governor of this Territory forever and ever; and if the Gentiles did not like this, they could leave and go to hell! He said that nine-tenths of the people of the Territory were southern sympathizers; that the North was wrong, and their people sympathized with the South."

Most of this demonstration is probably mere bravado, means to arouse the ignorant people, excite them against the government, make them still more the fanatical followers of the church leaders, and also to intimidate the public authorities, and induce them to continue the same let-alone and indulgent policy that has been the rule at Washington for so long. The government always seems to have demonstrated just enough against the Mormons to irritate them and keep them compact and prepared to resist it, but never enough to make them really afraid, or to force them into any submissive steps. The bristling attitude of the saints has ever had the apparent effect to qualify the government purpose, and make it stop short in its proceedings to enforce the laws and national authority. It is no wonder, therefore, that they repeat their frantic and fanatic appeals to their people, and their defiance to the government, and grow more and more bold in them. They find that it works better than professions of loyalty and half-way offers of submission, one bad effect of which, for their own cause, is, of course, to demoralize their followers and weaken their own authority over them.

There is no evidence yet of any change in the policy of the executive authority at Washington. While the new federal governor of the Territory, Mr. Durkee, from Wisconsin, the federal judges, and the superintendent of Indian affairs are all anti-Mormons and anti-polygamists, all, or nearly all, the other federal officers in the Territory are both leading Mormons and practical polygamists—the postmasters, collectors of internal revenue, &c. The postmaster of Salt Lake City is one of Brigham Young's creatures, and editor of the Mormon daily paper there. The returns of internal revenue in the Territory are found to be, proportionately to similar populations and wealth, quite small; and there are reasons to believe that the taxes are not faithfully assessed and collected. General Conner, who has been returned to his old place, as military commander of the district of Utah alone, is assigned a force of only one thousand soldiers, though he asked for and expected to have five thousand. The lesser number,



remote from all possible re-enforcements, is entirely inadequate to support the governor and judges in any exercise of authority that they may dare to undertake and that the Mormons may choose to resist. One thousand soldiers could very readily be "wiped out"—which is a favorite phrase of the saints toward their enemies—by a sudden uprising of the fanatical followers of Brigham Young and his apostles.

Excuse for such uprising is in much danger of being developed from the growing strength and impatience in the anti-Mormon elements in society at Salt Lake City, and the reckless, desperate character of some of those elements. Miners from Idaho and Montana have come into that city to winter, to spend their profits if successful, or to pick up a precarious living if unlucky: Many discharged soldiers also remain there or in the neighboring districts. The growing trade and commerce across the continent floats in other persons, good, bad, and indifferent as to habits and self-control. Other accessions to the Gentile strength and agitation are constantly made. The merchants of that class are increasing and becoming prosperous; those who have been silent and submissive under the Mormon hierarchy dare now to demonstrate their real feelings, under the protection of sympathy and soldiers. The *Daily Union Vidette* continues to be published as the organ of the soldiers and other Gentiles, and is bold and unsparing and constant in its denunciations of the Mormon church and its influences. Rev. Norman MacLeod, chaplain of the soldiers and pastor of the Congregational Society in Salt Lake City, has returned from a summer's trip to Nevada and California, with funds for building a meeting-house, and increased zeal against the Mormons. A Gentile theater has been established; various social organizations, in the same interest, are increasing and growing influential over the young people; General Conner himself, his fellow-officers and soldiers, are all bitter in their hatred of the Mormons, and eager for opportunities to subdue the government authority. Governor Durkee seems less disposed to be tolerant of the Mormon control and the Mormon disrespect to federal authority than his predecessors generally have been; and the judges, goaded, like all the rest of the Gentiles by Mormon insults and Mormon defiance, and their own incapacity, under government neglect, to perform their duties, more than share the common feeling of antagonism to the church leaders.

Thus the two parties are growing more and more antagonistic, more and more in a spirit of conflict. Thus, too, while we are rapidly aggregating and operating the means by which the Mormon problem is ere long to be solved, even without the special help or interference of the government, are also coming into life the elements and the danger of a more serious and personal collision, in which the Mormons, from their numerical superiority, would most probably be successful, and quite likely wreak terrible vengeance on their enemies. Of course, such a result would evoke full retribution on their own heads, for the people and government would arouse and enforce speedy and complete subjugation.

But these threatened and dreaded results ought to be and can be avoided. The government has now the opportunity to guide and control the operation of natural causes to the overthrow of polygamy and the submission of the Mormon aristocracy without the shedding of blood, without the loss of a valuable population and their industry. The steps to this are, first, a sufficient military force in the Territory "to keep the peace," to protect freedom of speech, of the press, and of religious proselytism; to forbid any personal outrages on the rights of the Mormons, and to prevent any revenges by them upon the Gentiles; and next the supplanting of all polygamists in federal offices by men not connected with that distinctive sin and offense of the Church. These steps, wisely taken, firmly administered, would rapidly give the growing anti-polygamous elements such moral power as would insure speedy and bloodless revolution. It may not be wise or necessary, at least at present, in view of past indulgence, to undertake to enforce the federal law against polygamy; that may be held in abeyance until the effect of such proceedings as have been indicated is fully developed. In short, I would change the government policy from the "do nothing" to the "make-haste-slowly" character; I would have its influence decidedly and continuously felt in the Territory against the crime of polygamy. Neglecting to do this, there is danger of anarchy and deadly conflict springing up on that arena; there is also sure prospect that the people of the country at large will, in their impatience and disgust, force upon Congress such radical measures against the Mormons as are, in regard to our past neglect and the present opportunity of peaceful revolution, to be almost as deeply deprecated; in either event, the responsibility will rest heavily and sharply upon the President and his cabinet, who are permitting the affairs of the Territory to drift on in the present loose and dangerous way, either ignorant of, or indifferent to, the rapidly-developing social conflict there.

#### DEFENSE OF POLYGAMY.

My readers may be interested to know the reply of the Mormons to my letters on the subject of polygamy. The *Deseret News*, the official organ of the church, had such a reply in August, from which I quote:

"As a people we view every revelation from the Lord as sacred. Polygamy was



none of our seeking. It came to us from Heaven, and we recognized in it, and still do, the voice of Him whose right it is not only to teach us, but to dictate and teach all men, for in his hand is the breath of the nostrils, the life and existence of the proudest, most exalted, most learned or puissant of the children of men. It is extremely difficult, nay, even utterly impossible, for those who have not been blessed with the gift of the Holy Ghost, to enter into our feelings, thoughts, and faith in these matters. They talk of revelation given, and of receiving counter-revelation to forbid what has been commanded as if a man was the sole author, originator, and designer of them. Granted that they do not believe the revelations we have received come from God—granted that they do not believe in God at all if they desire it. Do they wish to brand a whole people with the foul stigma of hypocrisy, who from their leaders to the last converts that have made the dreary journey to these mountain wilds for their faith, have proved their honesty of purpose and deep sincerity of faith by the most sublime sacrifices! Either that is the issue of their reasoning, or they imagine that we serve and worship the most accommodating Deity ever dreamed of in the widest vagaries of the most savage polytheist. Either they imagine that we believe man concocts and devises the revelations which we receive, or that we serve a God who will oblige us at any time by giving us revelations to suit our changing fancies, or the dictation of men who have declared the canon of revelation full, sealed up the heavens as brass, and utterly repudiate the interference of the Almighty in the affairs of men. By the first of these suppositions we would be gross hypocrites, by the other gross idiots.

"Know, gentlemen of the press, and all whom it may concern, that though a repugnance to this doctrine may be expressed by one in a thousand of people whom you call 'Mormons,' he is not one, nor recognized as such by that religious community of which he may be called a member. If one revelation is untrue all are untrue; if one was revealed by God all have their origin from the same divine source."

The News goes on to declaim that greater purity, better morals, accompany polygamy than monogamy, and adds:

"As well might it be said that the affection of the parent must be confined to one child, and that the affection of a united family could not reciprocate that of the parents, or jealousy would creep in, bitterness of thought be engendered, and the finer feelings and susceptibilities be blunted, as that one man cannot entertain for and extend affection to more than one woman, or that his affection could not be reciprocated by more than one without the same results being called into existence.

"The presumed misery consequent upon polygamy is advanced as one of the strongest arguments against it. Upon what is it based? Some person met and conversed with some other person who did not enjoy that amount of happiness in polygamy which they desired to realize. Who does of any condition of life? How many monogamic wives curse the hour they have entered into the bonds of wedlock? There is no argument in it, nor can an argument be logically based upon it. It is a statement, and can be met by a counter-statement which the experience of this united people can indorse, they having a practical acquaintance with, and an experience in the workings of, both forms of marriage. Take fifty polygamic families indiscriminately from this community and the same number in the same manner from any other community in the world, and there will be found more conjugal unhappiness in the latter than exists in the former."

The Mormons point lustily to the incontinence and license that exist in society where one man to one wife is the rule, as practicable argument in favor of their system. It is their final and favorite appeal, and always very satisfactory to themselves. They hold that there is more real purity and order in the intercourse of the sexes, and in society based upon polygamy, than that where monogamy is the law and license the practice.

#### A SPECIMEN OF MORMON PREACHING.

This extract from a late Sunday discourse in the Salt Lake City tabernacle by Heber C. Kimball, the first vice-president and chief prophet of the church, is a fair specimen of a good deal of the preaching of the Mormon bishops. I have reports of other sermons by Brigham Young himself, and others, so absolutely filthy in language that they cannot be produced in print anywhere:

"Ladies and gentlemen, good morning. I am going to talk to you by revelation. I never study my sermons, and when I get up to speak I never know what I am going to say, only as it is revealed to me from on high; then all I say is true; could it help but be so, when God communicates to you through me? The Gentiles are our enemies; they are damned forever; they are thieves and murderers, and if they don't like what I say they can go to hell, damn them! They want to come here in large numbers and decoy our women. I have introduced some Gentiles to my wives, but I will not do it again, because, if I do, I will have to take them to my houses and introduce them to Mrs. Kimball at one house, and to Mrs. Kimball at another house, and so on; and they will say Mrs. Kimball such, and Mrs. Kimball such, and so on, and are w——. They are taking some of our fairest daughters from us now in Salt Lake City, damn them. If I catch



any of them running after my wives I will send them to hell ; and, ladies, you must not keep their company ; you sin if you do, and you will be damned and go to hell. What do you think of such people ? They hunt after our fairest and prettiest women, and it is a lamentable fact that they would rather go with them damned scoundrels than stay with us. If brother Brigham comes to me and says he wants one of my daughters, he has a right to take her, and I have the exclusive right to give her to whom I please, and she has no right to refuse ; if she does, she will be damned forever and ever, because she belongs to me. She is a part of my flesh, and no one has a right to take her unless I say so, any more than he has a right to take one of my horses or cows.

"All the federal governor has to do is to pay the legislature and administer justice. Are the governors our masters ? No, sir, not for me ; they are our servants. We have our apostolic governments. Brigham Young is our leader, our president, our governor. I am lieutenant governor. Ain't I a terrible fellow ? Why it has taken the hair off all my head. At least it would if I hadn't lost it before. I lost it in my hardships, while going out to preach the kingdom of God without purse or scrip.

"To the Gentiles. O don't be scared at me ! Come up to my house and see me. I will give you some peaches and make you happy. I have two sons abroad preaching the kingdom of God. Brother Byrd says they are good boys. It makes me proud to hear it. I want the time to come when I can send out fifty sons to preach, all at one lick. Come up and see me : I will give you some peaches ; I will give you some apples ; I would give you some meat if I had it, but am about out."

THE EMIGRATION OF 1868.

The Mormons boast of one thousand emigrants from Europe this season, proselyted and shipped by their missionaries abroad. Most of them are English and Norwegians, simple, ignorant people, beyond any class known in American society, and so easy victims to the shrewd and sharp and fanatical Yankee leaders in the Mormon church. Education, common schools, are among the first of reformatory means needed in Utah.

HOGAN vs. PILE.

The use of an alphabetized copy of a registration list to facilitate voting does not render the election void.

Ex-parte affidavits are not legal evidence.

There were allegations of frauds and illegal voting, but the committee held that they were not proved.

The report was agreed to, (July 23,) yeas 90, nays 32.

June 18, 1868.—Mr. Cook, from the Committee of Elections, made the following report :

*The Committee of Elections, to which were referred the papers in the contested election case of John Hogan vs. William A. Pile, first district of Missouri, respectfully report :*

The whole number of votes returned for the sitting member is..	6, 728
For contestant.....	6, 510

Majority for sitting member.....	218
----------------------------------	-----

That such portions of the constitution and laws of the State of Missouri as have a bearing upon the questions presented are contained in the following extracts :

CONSTITUTION OF MISSOURI, ARTICLE TWO, SECTION FOUR.

[Extract.]

The general assembly shall immediately provide by law for a complete and uniform registration, by election districts, of the names of qualified voters in this State ; which



registration shall be evidence of the qualification of all registered voters to vote at any election thereafter held; \* \* \* after which no person shall vote, unless his name shall have been registered at least ten days before the day of the election.

REGISTRATION LAW, APPROVED DECEMBER 16, 1865.

[Extracts.]

SEC. 12. Immediately after the closing of such register the officer of registration shall make and certify two fair copies, alphabetically arranged, of the names of the qualified voters, as ascertained and determined by said board, one of which he shall deposit with the clerk of the county court on or before the next ensuing Saturday, and the other he shall deliver at or before the hour of 10 o'clock a. m. of that day, to some one of the persons who shall have been appointed to act as judges of the next ensuing general election in the election district for which the list was made, and shall take his receipt therefor. \* \* \* The person to whom the said list shall have been delivered shall produce the same at the place of voting, and deliver it into the possession of the judges of the election at the time of opening the polls on the day of the ensuing general election. \* \* \*

SEC. 13. The copy of said list so deposited with the clerk shall be subject to examination as other records of said court, but no such examination by any person not officially connected with the court, shall be allowed, except in the presence of said clerk or his deputy.

SEC. 14. The officers of registration shall, as soon as may be, deposit with said clerk the original books of registration, which shall be kept and preserved among the records of the court, except when otherwise disposed of as hereinafter directed.

SEC. 17. When any person shall have voted, the judges of election shall, at the time, write opposite his name on the list the word "voted."

The election in this district was held at election precincts numbered from 24 to 42, inclusive.

The first point made in the brief of contestant is that at the election in the thirtieth election precinct the registry list used by the judges of election was not the list certified by the officer of registration, but that another list was used, upon which the votes were received and the word "voted" written opposite the voters' names, in pursuance of section 17 above quoted.

The facts, as the same appear in evidence before the committee, are as follows:

The registry lists certified by the officer of registration were alphabetized simply by the first letter of the name. In some instances more than a hundred names were recorded under a single letter. To remedy the inconvenience occasioned by the imperfect manner in which the list was arranged, and the consequent delay in finding the name of the voter and receiving the vote, the judges of election of the thirtieth election precinct, on the day and night prior to the election, caused the certified list to be copied, and in the copy made the names were alphabetized by the first two letters, so that the name could be more easily and readily found; the names were numbered on the certified list and the numbers were transcribed on to the copy, so that where the name was found on the copy, by the aid of the number it could be more readily found on the certified list. (Testimony of John Green, Mis. Doc. 37, page 138.) Both the certified list and the copy made by the judges were present, and were used by the judges and clerks during the election. There is no evidence before the committee showing that the copy made by the judges was used to the exclusion of the certified list; the returns were made on the certified list. (See testimony of G. Sessingham, p. 139; also, the testimony of Charles P. Gould, p. 137, and of Milton H. Wash, p. 57.)

The committee are of opinion that the use of a more perfectly arranged copy of the certified registration lists by the judges, in connection with the original, for the purpose of facilitating the finding of the names of voters on the certified lists, and consequently making it possible to receive a much larger number of votes, did not render void the election,



and if done in good faith was no more a violation of the law of Missouri than it would have been to have employed an expert clerk to have found the names of voters upon the certified list without delay, and thus have expedited the voting. But it is insisted that this copy was made for the purpose of fraud, and used to enable persons not properly registered to vote, and to prevent others who were registered from voting. To substantiate this charge it is necessary to show that the copy made by the judges differed from the certified list. The evidence on this point is as follows: John Green testifies, (Mis. Doc. 37, p. 138,) "We compared the newly arranged alphabetical list with the certified list by counting the names on each, and found that they agreed all through." Gustavus Sessingham, p. 139: "I examined the two and found that they agreed." C. J. H. Hamig, p. 140: "I know that the copies agreed."

C. P. Gould was duly sworn as a witness on the part of General Pile, and testified as follows:

Am fifty-nine years of age; am a carrier; and live at 2612 North Eleventh street. On the day of election I was acting as a clerk of election at the thirtieth district; I was merely taking down the names of voters, and copying and numbering the ballots as they were put in. The books that were used there were the return books from the register, and they were copied onto other sheets and put in alphabetical order, that we might find the names readily. These copies that we used corresponded in every particular with the lists that were furnished. Whenever we had occasion to examine them—that is, the names that we copied from the original return list from the register—I frequently compared them, and found that they agreed in every particular. I had the original lists in my hands most of the day, and when there was occasion to refer to them I generally did it. I don't remember any person in particular who applied to vote, and whose name was not found, but there were several whose names could not be found on the list. The register was there with his original list, and there were corrected returns made by the judges. In this matter there was no difference made between parties on account of politics. I know there were names of both parties found in that way, because I remember there was some ill-feeling manifested with some men who came into the room, and one was Bob King; it was his particular friends that he was vexed to think couldn't vote, and they were corrected and returned, and they voted afterwards, and that was the way with both parties. The judges used the original certified lists for their returns.

The number of names on the list made by the judges was substantially the same as the number of names on the certified list, the only difference being that on the copy, in the place of one name is written the word "illegible," so that the only way in which the list made by the judges could be used for a fraudulent purpose would be by changing the names of the voters, so that the inquiry is now limited to the question, "Does it appear that any names on the list made by the judges were fraudulently substituted for other names which were upon the certified list?" The contestant alleges that a large number of persons voted from the judges' list whose names were not on the original or certified list, and he gives a list of one hundred and forty-four voters whose names he contends are not on the original or certified list. In determining this question it is necessary to understand how these lists were prepared. The original registry list was made by the voters' writing their own names upon it, together with their place of residence, at the office of the registering officer, and in his presence or that of his deputy. A large proportion of the voters of this election precinct are Germans, many of whom could not write their names in English, but wrote them in German, and many others attempted to give their names with an English sound, or as they would sound if spelled in English. The certified list was made by the registering officer from the original list, in alphabetized order, and was furnished to the judges of election; the number of the voter was put down on the original list at the time it was signed by the voter and was transcribed upon the certified list. The original registry



was required to be kept open until ten days before the election; then there was a court of appeals, to revise the lists, composed of the supervisor of registration for the district and the precinct registering officer. This court of appeals adjourned on Friday previous to the election, and on Saturday the registering officers were required to deliver one alphabetical copy to the judges of election, and another to the county clerk.

Under these circumstances it was unavoidable that there should be errors in transcribing the lists, and when the voter came to the polls to vote and gave his name, which was taken down upon the voters' list by the sound, it is not strange that there should be differences in the spelling of the names between the voters' list and the certified list. The alphabetized copy of the certified list made by the judges has not been furnished to the committee, and the only way by which the committee could ascertain whether names not on the certified list were improperly placed upon it has been a comparison of the voters' list with the certified list and with the original list. Of the one hundred and forty-four names which the contestant claims appear upon the voters' list, the committee find one hundred and twenty-four corresponding names upon the original list; names varied in the spelling, and in some instances in the sound, but which the committee believe are the same names, and that in these cases where the sound of the name is changed it is owing to the fact that the sound of the German letters has not been preserved in transcribing the name in English letters. A list of these names is hereto attached, marked Exhibit A.

Five names which are on the contestant's list as unregistered, the committee find on the original list and also on the voters' list as voting for contestant, viz, Fred. Place, number of ballot 453; Aug. Phelsadt, No. 510; Alfred Jennings, No. 619; F. Heppenbrock, No. 618; and John H. Bodie, No. 488.

The committee find forty-two names on the voters' list of those voting for contestant which the committee have not been able to find on the original registry list, and they find that there are thirty-four names on the original list varying in the spelling and in the sound which are probably intended for the names on the voters' list, from the fact that in transcribing the German name the initial letter is in many cases changed in sound and sometimes in form; the committee are not prepared to say that the forty-two names above mentioned of the voters are not on the original list in some form.\* About the same discrepancy appears between the certified list and the original list as between the certified list and the voters' list, and evidently occurring in the same way. The committee are therefore of opinion that it is not shown that there was any fraudulent substitution of voters' names at this election precinct. It is alleged by contestant that many persons were permitted to vote in this precinct whose names were not on the certified list. The facts in relation to this matter are as follows: Owing to the short time allowed by law for preparing the certified lists, some names which were on the original lists were omitted from the certified list. The names of some men of both parties, about sixty in all, were on the original list, and were not found upon the certified list when they offered to vote. The registering officer was there with the original list in his possession, and from it corrected the certified list, so that those persons who were entitled to vote could do so. (See testimony of John Green, pp. 138, 139; Charles P. Gould, pp. 137, 138; Milton H. Wash, p. 57; Robert S. King, p. 32.)

---

\* Exhibit B is a list of votes for contestant not found on registry list.



In the opinion of the committee it would have been an error to have refused to receive the votes of those persons who were properly registered, although their names were not on the certified list, and that having been received they ought not now to be rejected.

#### THIRTY-SEVENTH ELECTION PRECINCT.

It is claimed by contestant that the return from this precinct should be rejected because the original registry list was not returned to the office of the county clerk. The law requires that the officers of registration shall, "as soon as may be," deposit with the clerk the original books of registration. The only evidence before the committee that the original registry list was not returned, is as follows: "No. 21 registration book not returned to clerk's office, James C. Moody, judge." This certificate is without date and there is no proof before the committee when it was made.

The next paper is a copy of poll-book of the same election precinct, certified by S. W. Eager, clerk of the county court, which certificate is dated January 3, 1867. The election was held on the 6th day of November, 1866. Even if there was any proof before the committee that the original list had not been returned to the county clerk by January 3, 1866, the committee are not prepared to say, in the entire absence of proof of the circumstances of the case, that there was such violation of the law as would render the election void.

In the case of *Brockenborough vs. Cabell*, Contested Election Cases, page 86, the committee say:

The law of Florida requires that the return of votes given for a representative in Congress shall be returned to the secretary of state in thirty days next after an election. Your committee deem the provisions of the law only directory, and are of opinion that the votes returned after the thirty days should be counted as well as those returned within that time; a different construction might lead to bad results and tend to defeat the will of the people; a different construction would permit a corrupt officer to defeat the voice of a majority by his refusal to make the returns. It would subject the will of the majority to be defeated by an accidental loss of the returns.

It is alleged by the contestant that the county court arranged the voting precincts unfairly, and improperly discriminated against the contestant in so arranging the voting places where his friends were in the majority, that the registered vote could not possibly be polled during the day of election. This complaint is especially made with reference to the twenty-fifth, twenty-sixth, twenty-seventh, and twenty-eighth precincts. The legislature had the power to fix the voting districts or to provide by law that the county court should do so, and the law of Missouri having imposed upon the county court the duty of establishing voting places, that court had the right to fix the number in its own discretion, and the exercise of that discretion cannot be reviewed. If, indeed, the court should fraudulently refuse to establish voting places in such a manner as to disfranchise the citizens for partisan purposes, it might be necessary to set aside the entire election; but it is manifest that there may be other reasons fairly influencing the county court in fixing the limits of the voting districts than the number of voters contained therein. One district may be small but so densely settled as to contain many more voters than another embracing a vastly larger territory. The fact that there are many more voters in one precinct than another is not proof of fraud in the county court. It is true that in the election precincts named many registered voters did not vote and many tried to vote and could not; but it must be remembered that this was the first election under the registry laws; the experiment had never



before been tried, and that the fact that so many of the names on the registry were those of Germans, were written by the most in their own language, different in sound and orthography from English names, made it difficult to find them upon the registry lists, delayed the voting, and that no district was so large that if the registry had been of English names and alphabetized in a proper manner the whole vote could not easily have been taken. It should also be remembered that in the election precincts especially complained of, (the twenty-sixth, twenty-seventh, and twenty-eighth,) the friends of the sitting member were prevented from voting in about the same proportion as those of the contestant. This is shown by the fact that the vote taken after sunset was in the twenty-sixth precinct: Hogan, 93; Pile, 141. Twenty-seventh, Pile had 8 majority, (see testimony page 135,) twenty-eighth, Hogan, 53; Pile, 24, (and also testimony of Henry Gambs, page 135; John Conzelman, page 132; George B. Stone, page 157.) The committee do not think that the evidence shows such fraud on the part of the county court as to require the returns of the election in the precincts named to be set aside, but rather a defect in the law, which has been corrected by the legislature of Missouri in the new registration law, which requires printed lists properly alphabetized.

The next point made by the contestant is that a large number of votes were polled and counted for the sitting member by persons whose names do not appear on the original lists of registered voters. The contestant in his brief gives the names of seventeen persons who voted in precinct No. 25, sixty-one persons who voted in precinct No. 26, forty-seven persons who voted in precinct No. 27, forty-five persons who voted in precinct No. 28, whose names he alleges are not on the original registry lists. The committee have been able to find on the certified lists names corresponding, as they believe, to each given in the contestant's lists as having voted without being registered in precinct No. 25, and they have found all of the names but four on the original list. (See Exhibit C.) The committee give an example or two showing the way in which the German names are wrongly copied from the original lists to the certified lists, and again wrongly entered upon the poll lists, selecting those in which the variance is greatest: Original list, Johann Lynlfritz; certified list, John Helfrith; voters' list, John Halfrich. That the name on the original list and on the certified list is the same appears from the fact that the number of the residence is given in both 2114 Franklin avenue. It is further manifest from the fact that the name John Halfrich, when written in

German, thus, *Johann Helfrith*, would be read Johorm

Lynlfritz by any person acquainted only with the English.

Another example: Original list, Nicholas Gaur; certified list, Nick. Gans; voters' list, Nicholas Gaas.

In precinct No. 25 the names of eighteen persons appear on the voters' list as having voted for contestant whose names are not found in the same form upon the registry lists, and which would be excluded from the vote of contestant if the rule insisted upon by him were adopted. These names are given in Exhibit No. 1.

In precinct No. 26 the committee find on the original list names which they believe to be the names of the voters named in contestant's lists, except 8, as per Exhibit D, hereto annexed. It is to be noted that as the residence of the voter is given both on the original list and on the certified list, these two lists can be made to correspond with great



certainly, although the difference in the spelling of the names in these two lists is as great as that between either of them and the voters' list.

In precinct No. 26 the committee find the names of fifty-six on the voters' list as having voted for contestant which are not found in the original list in the same form, and which would be excluded if the rule claimed for contestant should be applied. (See Exhibit No. 2.)

In precinct No. 27 the committee find, as they believe, on the original lists the names of all the persons named on contestant's list except twenty. (See Exhibit E.) In the same precinct the names of forty-seven persons who voted for contestant cannot be found on the original registry lists. (See Exhibit No. 3.)

In precinct No. 28 the committee find on the original list the names of all the persons given in contestant's list but six. (See Exhibit F.)

In the same precinct they find the names of fifty-two persons voting for contestant whose names they cannot find on the original registry lists. (See Exhibit No. 4.)

In the amended lists furnished the committee by contestant, he claims that the sitting member received the votes of persons not registered, as follows : Precinct No. 25, 18 ; precinct No. 26, 18 ; precinct No. 27, 25 ; precinct No. 28, 21. Total, 82.

The committee find the number of persons voting for contestant whose names do not appear to be registered, so far as they can discover, as follows : Precinct No. 25, 18 ; precinct No. 26, 56 ; precinct No. 27, 47 ; precinct No. 28, 52. Total, 173.

During his concluding argument before the committee the contestant presented the affidavits of forty-two persons, showing that they voted for him, and it is insisted that the poll-books show that each of these persons were counted for the sitting member.

The committee cannot consider these affidavits as evidence, because it was admitted by contestant that the affidavits were wholly *ex parte* and taken without any notice whatever having been given to the sitting member, and because the same were taken without any order having been made for that purpose after the time allowed by law for the taking of the proof had expired.

If, however, the testimony was admissible it would be very far from conclusive, because the poll-books as printed show that a large number of persons, and among them a number of these affiants, voted for both the contestant and sitting member. This inaccuracy of the poll-book is accounted for by the fact that the number of the ballot was written upon it in pencil at the time the vote was given, and when the votes were certified many of the figures had become partially erased and so were mistaken for other numbers by the certifying clerk. A list of those shown by the poll-book, as printed, to have voted for both candidates is hereto annexed, marked Exhibit H.

The contestant contends that gross frauds were practiced in the twenty-sixth, twenty-seventh, and twenty-eighth election precincts, by admitting persons through a back door to vote out of their turn in the line, by special policemen lending their stars to friends to enable them to get up to the polls out of their order, &c. It is sufficient to remark that the evidence is of about the same character in relation to these three precincts, and tends to show that in each of these precincts persons voted out of their turn in the line of voters.

The only thing which it would be in the power of the committee or of the House to do to correct this irregularity would be to reject the entire vote of these precincts, because no data is given by which polls might be purged of the votes so given, nor is it shown for whom the votes were



cast. While the committee are of opinion that this evidence would not warrant the rejection of the entire vote in those precincts, it is apparent that such course would not benefit the contestant, the vote in those precincts being as follows :

	Hogan.	Pile.
Precinct 26 .....	732	814
Precinct 27 .....	478	423
Precinct 28 .....	857	606
Total .....	<u>2, 067</u>	<u>1, 843</u>

But it is shown by the proof that the persons permitted to vote out of their turn were special policemen who were so permitted to vote in order that they might devote their time to the performance of their duty as policemen ; (see testimony of Jacob S. Merrill, pages 121, 124 ; Frederick Scheireck, pages 120, 121 ; Adolph Graser, page 117 ;) nor does it appear from the testimony for whom those policemen voted, nor that they were not qualified voters. The contestant alleges that at these precincts votes were received after sunset ; at one of them, the 26th, the votes were returned and counted, and at the other two the votes were not so returned and counted.

Votes were cast after sunset as follows :

In precinct 26 .....	Hogan, 92 .....	Pile, 138
In precinct 27 .....	Hogan, — .....	Pile, maj. 8
(See testimony of Henry Gambs, page 135.)		
In precinct 28 .....	Hogan, 53 .....	Pile, 24

The law of Missouri provides that the polls shall be kept open until sunset. The committee expressly refrain from deciding whether the votes taken in precinct No. 26 after sunset should be counted or not. The law of Missouri requires that the polls should be kept open until sunset ; whether this law makes it imperative that the polls should be closed at sunset it is not necessary to decide, as the decision cannot affect the result of this case.

The committee are of the opinion that the votes which were given at precincts Nos. 27 and 28 after sunset ought not to have been returned or counted, because in each of those precincts the polls were regularly closed at sunset. (See testimony of John Conzelman, pages 132, 133 ; Henry Gambs, page 135 ; George B. Stone, page 157.) After the polls were once regularly closed at sunset it is obvious that they could not be legally opened again during the evening with only partial notice to the voters ; such a course would open the door to any fraud that might be attempted.

The contestant complains that many men were not registered who were entitled to be ; and he introduces evidence tending to show that Richard Berry, S. D. Morgan, William Heaps, Alex. Jefferson, Chas. H. Groly, and Milton Craig were not permitted to register and vote, although legally entitled to do so.

The committee have deemed it unnecessary to investigate in detail the cases of each of these persons, because whether admitted or rejected their votes could not vary the result.

The committee recommend the adoption of the following resolution :

*Resolved*, That William A. Pile is duly elected a member of this House from the first district of the State of Missouri.



EXHIBIT A.

District No. 30.

Name as given in contestant's list.	Name as found in certified alphabetical list.	Name as found in registry.	Page.
Godfrey Godhardt			
H. Woestmann	Hy Waestmann	Henry Woestman	532
Fred. Gushing	Frederick Grische	Frederick Grische	530
Frank Ewing	Frank Ahring	Frank Ahring	527
Henry Schur	Heinrich Saer	Heinrich Saer	527
Fred. Euselong	Fred. Ammelung	Fred. Amelung	523
H. P. Krollman	Henry R. Nollmann	Henry R. Nollman	524
John G. Eskendorff	John G. Meskendorf	John G. Muskendorff	520
John W. Elffeden	John W. Evandon	John W. Evenden	524
Herman Elhardt	Herman Ahlert	Herman Ahlert	524
William W. Woersheidt	Wm. W. Worstel	William W. Worstel	527
Gus. Pittman			
Christ. Ellers	Christian Allers	Christian Allers	524
Chris. Babbidick	Christ. Rabenick	Christ. Rubenick	524
B. Ronnmeier	Cor. E. Rachmeier	E. Riehmuier	520
John E. Deppenbreck	John F. Dephendahl	John F. Dependahl	521
H'y Tiedem	Heinrich N. Tiaden	Heinrich Nehlen Trader	531
So. Graiser		Xavier Graisen	520
H'y Mullenhorse	Heinrich Heillinghorst	Henrich Killinghorst	523
H'y Treser			
Chas. Siebourg			
J. H. Gerheide	G. H. Waerhard	J. H. Woerheide	527
W. Uppermann	Wm. Opperman	Wm. Oppermann	528
Jacob Norman			
Adam Engel	Adam Hingle	Adam Hingle	529
Anton Walker	Anton Warder	Norton Worder	521
Chris. Winhorst	Fritz Windhorst	Fritz Windhurst	527
Hern Teagner	Herman Teezel	Herman Tuger	520
Frank Hornstrider	Frank Hohnstrator	Frank H. Hohnstrohn	525
Charles Vonderee	Chas. Vondereabe	Charles Vorder Abe	526
Henry Wittmann	Henry Witland	Henry Willand	530
James Newell			
A. C. Stevens	Aug. C. Stifel	Augustus C. Stifel	526
Conrad Sprick	Conrad Spoek	Alexand Sprock	527
George Phieffer	Gottleibe Pfeiffer	Gottlieb Pfeiffer	532
Jas. Bagatt	Joseph Bagot	Joseph Bagott	527
D. Tungman	D. Fangmann	D. Fangman	524
Charles Huel			
C. D. Liedlitze	C. F. Siedlitz	C. F. Seidlitz	519
John Huckensiter	John Hergender	John Herkenswer	519
Frederick Gessheer	Fred. Gessner	Frederich Gessner	521
Reichard Besserly	Ritchard Basewelter	Richard Boeswetter	519
George W. Hillier	George W. Hillier	George W. Million	525
Jacob S. Hening	Jacob H. Hamig	Jacob H. Harrig	519
T. H. Ludhouse			
Frederick Heiter			
Anton Kroener	Andrew Koener	Andrew Loener	528
Frank Sumers	Frank Somers	* Frank Webster	530
Henry Boehman	H. Boehm	H. Boehm	521
J. Upenlander	C. L. Openlander	C. S. Appenlander	523
Angust Cutman	Aug. Kothlander	August Katlonder	531
J. Hickmeier	Johann Knickmeier	Johan Knickmeyer	526
E. Lang			
F. W. Walig			
L. Joulse	Louis Johler	Louis Tahler	523
Charles Weimer			
W. Dailey	Wm. Dehling	William Dehling	525
W. R. Cusmer			
Fred. Ban	Fred. Brand	Frederick Brand	530

\* Error in transcribing; Somers lives on Webster street.



EXHIBIT A.—*District No. 30*—Continued.

Name as given in contestant's list.	Name as found in certified alphabetical list.	Name as found in registry.	Page.
Fred. Gerroll .....	Fritz Gerhold .....	Fritz Gerhate .....	532
F. W. Oglemillier .....	F. Obermaler .....	Frederick Obermeier .....	531
F. Barkoper .....	Fred. Barkhoffer .....	Fred. Barkhoefer .....	521
H. Steaman .....	Henry Stiermann .....	Henry Stirsman .....	525
F. Bucket .....	Frank Bucher .....	Frank Beecher .....	525
*Fred Place .....	Fred. Blase .....	Theo. Blase .....	525
L. Blenckmeyer .....	Pass Phillip .....	Laban Phillips .....	519
P. Phillips .....	Charles Menke .....	Charles Menke .....	525
Charles Meeker .....	H. A. Ische .....	H. A. Ische .....	521
Henry Ashee .....	G. W. Wieshamer .....	G. W. Wieshaun .....	528
E. W. Wieshammer .....	John Bawmann .....	John Bauman .....	519
John Bommer .....	J. H. Sepmeyer .....	J. H. Sepmeyer .....	530
J. H. Lepmeyer .....	John G. Rubleman .....	John G. Rubelmann .....	521
J. J. Rubleman .....	John H. Budde .....	John H. Budde .....	521
*John H. Bodie .....	Jacob Tieman .....	J. Tiemann .....	530
J. Temer .....	Peter Klomann .....	Peter Kloman .....	525
P. Gloman .....	.....	.....	.....
W. Brellman .....	Ludwig Kastin .....	Ludwig Kerstad .....	528
Ludwig Carston .....	Adolph Bruggerman .....	Adolph Bruggemann .....	520
Add. Brockermann .....	.....	.....	.....
*Aug. Phelsadt .....	Christian Rehling .....	Christian Rehling .....	523
Chris. Roherling .....	Wm. Reckman .....	William Reckman .....	528
William Beekman .....	H. Cramme .....	H. Kramme .....	524
H. Cramig .....	Heinrich Seegers .....	Heinrich Seegers .....	520
Henry Siegels .....	William Ricoe .....	William Rarae .....	524
William Richs .....	H. T. Harlow .....	A. T. Harlow .....	530
Henry Hollow .....	Henry Piper .....	Henry Pierce .....	523
Henry Pice .....	George Walter .....	George Multer .....	527
George Walter .....	Hudson C. Carkener .....	Hudson E. Caskener .....	524
H. Cartner .....	Aug. Standinger .....	Augustus Handinger .....	520
August Staddingle .....	F. W. Mester .....	F. W. Merten .....	527
F. W. Messer .....	K. Keiner .....	K. Keiner .....	519
Henry Keener .....	Alfred Genung .....	Alfred Genung .....	523
*Alfred Jennings .....	Peter Dustman .....	Peter Dustman .....	523
Peter Dustring .....	F. Wm. Stoppelman .....	Friedrich Wilhelm Stopplemann .....	531
Henry Stoppelman .....	.....	.....	.....
George Koch .....	Christ. Vaesa .....	Christ. Veasa .....	520
Christ. Weiss .....	Frank H. Bergfield .....	Frank H. Bergfield .....	528
F. H. Burkfield .....	F. Papenbrock .....	F. Papenbrock .....	529
*F. Heppenbrock .....	Joseph Seal .....	Joseph Seal .....	229
Joseph Leal .....	C. Sepmeyer .....	C. Sepmeyer .....	527
C. Lepmeyer .....	John K. Conrades .....	John H. Conrades .....	525
John H. Conrady .....	Franst Krouse .....	Francis Krauss .....	526
Francis Claus .....	H. Grasshoff .....	H. Grasshoff .....	524
H. Grasslop .....	G. F. Sachleben .....	Gerhard F. Suchleben .....	521
Gerhard Lachleider .....	Fred. Schliff .....	Frederick Schlieff .....	532
Fred. Schlick .....	H. Wm. Rollkotter .....	H. William Bullkvetter .....	532
Henry Rollcutter .....	J. H. Kraemer .....	F. H. Kreamer .....	522
Henry Rollcutter .....	.....	.....	.....
J. H. Creamer .....	John Allers .....	John Allers .....	519
William Wetlage .....	Friedrich Conrad .....	Friedrich Conrad .....	530
John Ellers .....	Herm Strack .....	Herman Strockelaiher .....	530
Fred Cornes .....	H. Stirken .....	H. Stucken .....	527
H. Stacklehan .....	Henry Ruppert .....	Henry Robert .....	527
H. Stoeke .....	Casper Siekmann .....	Casper Liekmaun .....	525
H. Rieper .....	Frank Konstinger .....	†Name illegible; north-east corner Broadway and Chambers.	529
Caspar Siekman .....	.....	.....	.....
Frank Constonger .....	.....	.....	.....
John F. Fierbaum .....	.....	.....	.....

Counted also for contestant.

†This is the residence of Frank Konstinger.



EXHIBIT A.—*District No. 30.*—Continued.

Name as given in contestant's list.	Name as found in certified alphabetical list.	Name as found in registry.	Page.
H. A. Howard .....	H. A. Hummert .....	H. A. Hummers .....	530
Ferdinand Cotlander .....	Fred. Kottlender .....	Frederich Koutander .....	524
William J. Henry .....	Wm. J. Henry .....	William T. Henry .....	528
Christ. Lukemeyer .....	Christ. Lukmeyer .....	Chrit. Sullkemeier .....	520
John H. Morehouse .....	John H. Morhous .....	John H. Morodus .....	524
William Nolte .....	Wm. Volte .....	William Volte .....	529
Christ. Kuneke .....	Stephen Kunneke .....	Stephen Kunnecke .....	532
Henry Taake .....	Henry Fiecke .....	Henry Frick .....	526
Gottlieb Scheele .....	Gottlieb T. Stol .....	Gottlieb J. Stale .....	521
Fritz Kullrofe .....	Fritz Kuhlwlrm .....	Fritz Kuhlwilen .....	525
Henry Fosterman .....	.....	.....	.....
Mathias Herman .....	Mathias Flomann .....	Mathias Taman .....	520
H. Kleet .....	.....	.....	.....
Fred. N. Laborg .....	Fr. Matthew Sabey .....	Matthew Labrey .....	519
Henry Koenigkramer .....	Hy Konekozoemer .....	Henry Konekramer .....	532
F. R. Schnuck .....	Fred. R. Schnuck .....	Fred'k Rudolph Schnuck .....	524
Frederick Samdlick .....	Fred. Sonlish .....	Frederick Senlish .....	525
Andrew Schneider .....	Andree Schneider .....	Andreas Schneider .....	528
William Ehler .....	William Ehler .....	Henry Ehrler .....	528
F. W. Sloeman .....	T. W. Schloeman .....	T. W. Schlaeman .....	521
August Janell .....	.....	.....	.....
Valentine Oborn .....	Vallin Orban .....	Valtin Urban .....	519
William Bolkenbosst .....	Wm. Walkenhorst .....	Wm. Walkerhorst .....	526
Enoch Burns .....	Enoch Burrows .....	Enoch Burrowes .....	531
Charles Straube .....	Charles Stroube .....	Charles Straube .....	518
Rudolph Gauseman .....	R. Gausman .....	R. Hausman .....	531
W. D. C. Bodefricker .....	W. D. C. Botefwhr .....	N. D. C. Botefuhr .....	528

EXHIBIT B.

*Votes for contestant not found on registry list.*

Page where name is found on poll-book.	Number of vote.	Name as entered on poll-list.	Probable name.	Page where ballot is found counted for Hogan.
535	39	Chas. Sluder .....	Carl Sluter .....	545
535	63	Jacob Bromser .....	Jacob J. Broemser .....	545
535	71	John Moniken .....	John Moenkes .....	545
535	84	Casper Troun .....	.....	545
535	88	E. Fitzmorris .....	E. Fitz Morris .....	545
535	90	Wm. Drouht .....	.....	545
535	99	Sam'l Hardeman .....	Samuel Hartman .....	545
535	100	Hy Sluder .....	Heinrich Schluter .....	544
536	106	E. H. Pierceson .....	.....	545
536	121	Stephen Peffer .....	Stephen Pfeifferly .....	545
536	123	Wm. Feeley .....	Wm. Fuly .....	545
536	126	Bernard Mersman .....	Bernard Musman .....	545
536	160	J. M. Morse .....	.....	545
536	167	John W. Winn .....	J. M. Winn .....	545
536	176	George Hitchman .....	Geo. N. Hinchman .....	545



EXHIBIT B.—*Votes for contestant not found, &c.*—Continued.

Page where name is found on poll-book.	Number of vote.	Name as entered on poll-list.	Probable name.	Page where ballot is found counted for Hogan.
536	178	John F. Cassman .....	John W. Casburn .....	545
526	188	E. K. Fassett .....	A. K. Fassett .....	545
636	197	W. H. Uhlman .....	Chs. W. Uhlman .....	545
536	220	John Piete .....	John Pietwh .....	545
536	334	J. F. Taylor .....	John D. Taylor .....	545
537	248	Wm. Weaver .....	William Weber .....	545
537	261	M. B. Taupkins .....	M. B. Topkins .....	545
537	271	Patrick Cockman .....	Patrick Coughlen .....	545
537	279	Stephen Quanto .....	Stephen Quante .....	545
537	282	Bernard Gerefermill .....	Bernard W. Gevermahle .....	545
537	285	J. L. Rice .....	John A. S. Rice .....	545
537	298	A. Withman .....	.....	545
537	344	Marvin Cooper .....	.....	545
537	346	C. Woffin .....	.....	545
537	367	N. Andecker .....	.....	546
537	369	Mich Menon .....	.....	545
538	374	Andrew J. Roershaw .....	Andrew J. Kershaw .....	545
538	398	G. Gra .....	.....	546
538	399	F. Niehemm .....	.....	545
538	409	Henry Neiyer .....	.....	545
538	422	Simon Vodecker .....	Simon Bodecker .....	545
538	469	A. R. Jude .....	.....	545
538	492	John Stithe .....	.....	544
538	494	Thos. Dearing .....	.....	545
539	503	J. H. Robgan .....	.....	545
539	520	P. S. Owendale .....	.....	545
539	541	L. L. Ashbrook .....	.....	545
539	533	Frank Coalmeyster .....	.....	545
539	581	Louis Tingler .....	.....	545
539	584	W. H. Maurie .....	.....	545
539	585	James Miller .....	.....	545
540	639	Henry Luntan .....	.....	546
540	677	George F. Elm .....	.....	544
540	684	Thomas Rigway .....	.....	545
540	708	Charles Gemp .....	.....	545
541	790	Wm. Wetlage .....	.....	545
541	793	Daniel Flint .....	.....	.....
542	916	J. M. Bixler .....	.....	.....
542	917	R. P. Cohen .....	R. Pierre Cohn .....	545
542	929	John Boergelt .....	John Borgett .....	545
542	935	Wm. L. Carr .....	.....	544
542	938	Mark Maliney .....	Mark Mulluney .....	544
542	956	W. Linstrofe .....	William Linstroth .....	545
542	959	Patrick Hurley .....	.....	545
542	966	George Coloman .....	.....	545
542	969	Charles Kanaugha .....	.....	545
542	971	Kirk Dennis .....	Dennis Kirk .....	544
542	973	Jasper Herman .....	Herman Jasper .....	544
542	1006	John Taulberg .....	.....	545
542	1027	Anter Ilkman .....	.....	545
542	1028	Clemens Gotwinkle .....	.....	546
543	1044	Henry Buschamper .....	H. Buslemper .....	545
543	1056	D. R. Griffin .....	Otis R. Griffin .....	545
543	1071	Wm. Lucking .....	.....	545



EXHIBIT B.—*Votes for contestant not found, &c.*—Continued.

Page where name is found on poll-book.	Number of vote.	Name as entered on poll-list.	Probable name.	Page where ballot is found counted for Hogan.
543	1107	John Rowan .....		544
543	1113	Fredk. Dingsmeyer .....		544
544	1178	James Hurley .....		544
538	453	*Fred. Place .....		545
539	510	*Aug. Phelsadt .....		545
539	619	*Alfred Jennings .....	Alfred Genung .....	545
545	668	*F. Heppenbrock .....	F. Pfafenbrock .....	545

\*Names given in contestant's brief as counted for sitting member without having been registered, but which are also found counted for contestant.

EXHIBIT C.

*District No. 25.*

Name as given by contestant.	Name as found in alphabetized registry list.	Page.	Name as found in original registry.	Page.
John Feuerbust .....	John Feuerbach .....	316	John Tenebeub .....	283
Carl Ballon .....	Carl Balmer .....	313	Paul Lalmer .....	280
Antro Geiser .....	Anton Geiser .....	317	Name illegible, same residence as Anton Geiser.	290
John Bucker .....	John Bucker .....	314	Two names illegible, on Franklin avenue, the street on which J. Bucker resides.	292
John Helfrich .....	John Helfrish .....	318	Johorm Lynlfriz .....	290
Andor Koras .....	Anton Korras .....	320	Anton Borroz .....	293
Floria Eckstein .....	Florin Eckstein .....	316	Name illegible, same residence as F. Eckstein	288
Joh Kakly .....	John Coakley .....	315	John Coakley .....	289
Carl Chrislear .....	Carl Christian .....	315	Charles Carsten .....	285
W. Mullen .....	Wm. Moeller .....	322		
Christ Bermeny .....	Christian Bremine .....	314		
William Benns .....	William Beng .....	314	Wilhelm Lang .....	
Christof Osborn .....	Christ Osburg .....	323	Christopher Ashary .....	279
George Müller .....	George Mueller .....	322		
Nicholas Gaas .....	Nick Gans .....	317	Nicholas Gaur .....	292
Valentine Riedel .....	Balentine Riedel .....	324	V. Riedel .....	279
W. Hahn .....	William Hahn .....	318		



EXHIBIT D.  
District No. 26.

Name as given in contestant's list.	Name as found in alphabetical list used by judges.	Page.	Name as found in original registry.	Page.
J. C. Dow .....	J. C. Dearraugh .....	373	James C. Darrough .....	343
* Henry Reckrath .....	Henry Boekreth .....	372	Henry Bockrath .....	338
James D. M. Coff. ....	James D. McCaff. ....	386	James D. McCobb .....	337
Martin Miser .....	.....	.....	.....	.....
John Williamson .....	John Wilkenson .....	385	John Wilkenson .....	331
* Abraham Teffer .....	Abraham Tafenler .....	384	Abraham Taffender .....	339
Peter Jacob .....	Peter Iager .....	377	Peter Jayner .....	337
* Francis Reyseger .....	J. T. Reysser .....	382	John F. Reyseer .....	332
* J. W. Offeheidter .....	F. W. Aufterhide .....	370	F. W. Aupderheide .....	339
J. H. Custer .....	J. H. Kuster .....	378	J. H. Custer .....	334
Charles S. Maury .....	.....	.....	.....	.....
George Beckman .....	.....	.....	.....	.....
John B. Cross .....	John B. Gross .....	376	John B. Gross .....	347
George Dundy .....	George Damder .....	374	George Damde .....	335
August Rigermann .....	August Brueggeman .....	371	August Bruggeman .....	334
* Charles Springer .....	Charles Spooner .....	384	Charles Spooner .....	341
* August Krring .....	Augustus Coring .....	372	Augustus Coring .....	331
Herman Vendrat .....	Herman Bendral .....	372	Herman Bendrat .....	340
Charles A. Spalhinier .....	.....	.....	.....	.....
* Julius Fellzer .....	Julius Pfalzer .....	381	Julius Pfalzer .....	338
Fred Seibel .....	Fred Zibell .....	386	Fred Zibell .....	334
A. Kabrelac .....	H. Cabrillac .....	373	H. Cabrillac .....	333
W. J. Krips .....	W. J. Cribbs .....	373	W. J. Cripps .....	334
Antone Trant .....	Anton Krant .....	378	Anton Krant .....	336
Hickman Sheeley .....	.....	.....	.....	.....
John Bailey .....	John Bagley .....	371	John Bailey .....	333
John Kamerer .....	John Cammerer .....	373	John Cormerer .....	344
Ferd Wohling .....	Ferd. Wallindy .....	385	Ferd Wallendy .....	332
Lewis Casiger .....	Louis Kassehagen .....	378	Louis Kasehagen .....	339
Adam Schaffner .....	August Schaffer .....	383	Justius Shaffer .....	339
† John Tobin .....	Frank Tobin .....	384	Frank Tobin .....	339
Pat. Kenihan .....	Pat. Kinney .....	378	Pat. Kinney .....	348
Fred Cleaver .....	Ferd. Klaber .....	378	Frederick Klaver .....	342
H. P. Dwollay .....	Henry B. Divelle .....	374	Henry B. Dwells .....	337
W. A. Reamer .....	.....	.....	.....	.....
* Ludwig Vonhoff .....	Ludwig Fornoff .....	375	Ludwig Fornopp .....	340
* Fred Clenkey .....	Fred. Klauke .....	378	Fred Klanke .....	347
H. Pinder .....	H. Binder .....	372	H. Binder .....	338
John Sisley .....	Q. R. Siesta .....	383	John R. Siesle .....	333
J. F. Sherburn .....	J. F. Sharkey .....	384	John F. Schuberg .....	346
Fred Gibbatch .....	Frederick Gerbig .....	375	Fr. Gerbig .....	334
Thomas Nidersheck .....	Thomas Kindischeshek .....	378	Thomas Kendischts .....	342
Gustav Spanning .....	Gustav R. Spameegal .....	383	Gustavus R. Spunnagel .....	334
Adam Konrad .....	Adam Conrad .....	373	Adam Conrad .....	344
* G. M. Belcher .....	J. N. Belser .....	371	J. M. Belser .....	349
Charles Pank .....	Charles Bang .....	372	Charles Bang .....	335
Henry Competer .....	Henry Grospecter .....	376	Henry Grappeter .....	335
Gottlieb Jacob .....	Jacob Galleib .....	376	Gottlieb Jacob .....	343
Henry Hepperkump .....	Henry Herborkern .....	376	Heinrich Haberham .....	332
Emil Cast .....	Emil Karst .....	378	Emile Kerst .....	331
Michael Williams .....	Michael Whelane .....	386	Michael Whelon .....	342
Henry Treiselman .....	Henry Fredman .....	375	Henry Frieselmann .....	345
* W. Mittenbrock .....	W. Wittenbrock .....	386	William Wittenbrick .....	345
J. M. Ruth .....	W. W. Ruth .....	382	William Ruth .....	335
J. H. Buckstaff .....	John Henry Borgrtep .....	372	John Herman Borgstes .....	345
* James Burer .....	John Benren .....	372	John Benson .....	341
James M. Seete .....	James M. Leete .....	389	James M. Leeld .....	346
John Icy .....	John Erse .....	374	John Eise .....	337
Michael Cregan .....	.....	.....	.....	.....
Fred Woofslager .....	.....	.....	.....	.....
* Frederick Iers .....	Frederick Jones .....	378	Frederick Jors .....	337

\* Misprints.

† Counted also for contestant. Vote No. 929, page 365.



## EXHIBIT E.

## District No. 27.

Name as given in contestant's list.	Name as found in alphabetical list used by judges.	Number.	Name as found in original registry.	Page.
* W. Regal				
John Bosterman	John B. Ostermann	1490	John B. Ostermann	398
Hy Mentzerodt				
C. H. Geofring				
Phil. Overstalz	Ph. Oberschelp	1487	Philip Oberschulz	404
John Seiver				
Jos. Bonenmacher	Joe Rodemacher	1626	Joseph Rodemacher	399
John Sentroff	John Zemtroff	2143	Illegible, 1626 Twelfth street.	406
Jacob Brocless	Jacob Roglers	1605	Jacob Rogles	394
Philipp Obermiller	Ph. Oberrwinker	1496	Ph. Oberwinde	304
P. Overstalz, jr				
Charles Fininger				
Charles Reedsing				
F. Veltner				
J. J. Obaum				
Gotleib Shindler	G. Spinelan	1799	Gottlieb Sepmellem	399
John Wilsler				
Hy Mitfse	Henry Milfly	1307	Henry Milfeily	407
H. Blatke	Aug. Placke	1514	August Plaecke	392
A. Mizenzag				
J. Cout	Jacob Kath	1048	Jacob Theth	398
Fred Lemer				
Jacob Osborg				
L. G. Bessel	L. G. Beasley	141	L. G. Baeseles	411
George Mehter				
William Pliasa				
H. Leker	H. Lecker	1170	Heinrich Luker	404
Casper Kehaun	Casper Kinchon	1031	Casper H. Krehant	397
George Wilfred				
Peter Extreter				
George Storssmer	G. Strasner	1683	George Strosner	387
H. Winhold	H. Memoldt	1405	Henry Meinholdt	406
J. Ugleleurg	John Englehart	486	Johann Englehardt	405
John Hude	John Uhde	1984	John Uhde	393
J. B. Kronemire	J. P. Gronemeier	644	J. P. Gronemeter	400
P. G. Lesmington				
H. Heteman	H. Heitman	887	Herman Heitman	410
August Emptke	August Tink	1941	August Temke	397
H. Massenwith				
David Wilkening	Dave Whelan	2093		
T. Westeset	Fritz Westerfeldt	2132	Fritz Westerfield	411
Rudolph Walry	Ulrich Rudolph	1628	Ulric Rudolph	400
Charles Wachter				
C. Wats	Charles Valtz	2003	Charles Vallet	407
Henry Trabcr	H. Droebey	441	Henrio Droebe	408

\* Counted for both candidates.



## EXHIBIT F.

*District No. 28.*

Name as given in contestant's list.	Name as found in alphabetical list used by judges.	Number.	Name as found in original registry	Page.
Henry Stitgers .....	Henry Stelley's .....	1646	Henry Sellges .....	449
J. H. Bode .....	J. H. Bockla .....	61	J. H. Beda .....	448
Fred. Othoff .....	Fred. Uthoff .....	1814	Fred. Uthoff .....	446
W. Fall .....	Wm. Paul .....	1479	William Paul .....	456
M. Slitzer .....	Mathias Schlete .....	1612	Mathias Schlet .....	464
William Smeathers .....	Wm. G. Smeathers .....	1706	William G. Smeathers .....	456
G. D. Sividay .....	Geo. D. Sirordie .....	1671	Geo. D. Siravlie .....	452
H. Freiberg .....	Henry Frieberg .....	549	Henry Frieberg .....	454
M. O. Ribe .....	Manel Oribe .....	1432	Manuel Oribe .....	458
J. J. Schuler .....	J. J. Schuler .....	1776	J. J. Schuler .....	453
C. Steinecke .....	George Sternecker .....	1713	George Stunecker .....	457
John H. Landers .....	F. H. Sander .....	1744	F. H. Sander .....	460
F. W. Leibing .....	Frederick Wm. Sieweig .....	1678	Friederick Wm. Siewing .....	454
P. Rosenban .....	Peter Rosenbach .....	1587	Peter Korenbach .....	462
Eichael Torbey .....	.....	.....	Michael Torpey .....	455
F. H. Furgest .....	F. Henry Toengis .....	1783	Franz Henry Taengis .....	462
A. Brenneman .....	A. Brennemeyer .....	97	A. Breneman .....	452
P. Sable .....	Paul Goebel .....	623	Paul Goebel .....	449
Chas. Gerkers .....	Charles Jorkers .....	912	Charles Jorkers .....	463
C. Lutman .....	Casper Suttman .....	1725	Casper Juttman .....	458
P. G. Schrader .....	.....	.....	.....	.....
W. H. Schlefe .....	Samuel H. Schleef .....	1716	Samuel H. Schleef .....	457
Conrad Hanss .....	.....	.....	.....	.....
G. Goehring .....	Gerhard Kohring .....	937	Gerhard Kohring .....	451
T. M. Coxwater .....	T. N. Kaltwasser .....	930	T. A. Tlattwaffens .....	450
H. Keffer .....	S. Kapper .....	972	S. Kapfer .....	461
Chas. Kramer .....	.....	.....	.....	.....
W. Klatzman .....	Wm. Protzman .....	1501	William Protzman .....	457
William Glanhaff .....	Wilhelm Gerloff .....	687	Wilhelm Gerloff .....	461
H. Gerble .....	Henry Gobbles .....	666	Henry Gobbles .....	458
Henry Gutledge .....	H. H. Hettage .....	721	H. Henry Hettaye .....	446
William Brenckle .....	William Brenker .....	119	William Brincker .....	455
Joe Cumerly .....	Josh. Kummerle .....	961	Jos. Kummerle .....	455
George Hargue .....	George Largue .....	1038	George Largue .....	450
C. Penkuper .....	Charles Pankoke .....	1470	Charles H. Pankohle .....	452
H. Oremus .....	.....	.....	.....	.....
Gustav Yerst .....	Gustave Gust .....	669	Gustav Garst .....	459
James Messrus .....	Joseph Messing .....	1323	Joseph Messing .....	454
John Pekker .....	John Baker .....	101	John Baker .....	452
John H. Corre .....	John H. Kohring .....	991	John H. Kohring .....	460
William Egdart .....	.....	.....	.....	.....
W. B. Mainjumer .....	Wm. B. May, jr .....	1262	Wm. B. May, jr .....	461
John Basse .....	John H. Boose .....	165	John H. Bosse .....	459
William Breanard .....	William Bruman .....	43	Wm. Bruvoren .....	447



## EXHIBIT No. 1.

District No. 25.

Page.	Number of vote.	Name as entered on poll-list and not found on registry.	Page where ballot is found counted for Hogan.	Page.	Number of vote.	Name as entered on poll-list and not found on registry.	Page where ballot is found counted for Hogan.
298	7	Patrick Lagea .....	308	298	109	John P. Lorkin .....	308
298	8	Philar Thomas .....	308	299	145	Mattew Blunch .....	308
298	16	Thomas Karaw .....	308	299	181	Sullivan Bath .....	309
298	21	S. J. Bungler .....	308	299	207	L. A. Morthy .....	309
298	44	C. T. Comrad .....	308	299	252	R. A. W. Krenshaw .....	308
298	48	Thorna Kalligar .....	308	300	272	Thomas H. Criffin .....	309
298	74	James W. Nurph .....	308	300	273	Georges Allen .....	308
298	83	Henry J. Harrison .....	309	300	284	R. F. Bropt .....	309
298	99	Tom Yule .....	308	300	285	Daniel Delpher .....	309

## EXHIBIT No. 2.

District No. 26.

Page where name is found on poll-book.	Number of name.	Name.	Page where ballot is found counted for Hogan.	Page where name is found on poll-book.	Number of name.	Name.	Page where ballot is found counted for Hogan.
353	20	Thomas Garrity .....	366	354	240	Charles H. Statley .....	366
353	30	Charles W. Dutton .....	366	354	247	James Dowe .....	365
353	41	B. P. Lennox .....	365	354	273	Z. Roderick .....	366
353	43	Thomas Mackavelly .....	366	355	305	Francis Boehler .....	366
353	58	C. H. Rohlman .....	365	355	313	Fred. A. Weiniger .....	365
353	64	Marshal Beaudraw .....	365	355	326	Wilkinson Edwards .....	365
353	72	Christian Whispen .....	366	355	329	John Filibert .....	366
353	74	H. W. Dickhamer .....	365	355	363	Joseph Mackaway .....	365
353	90	Abraham Tefer* .....	365	355	398	George Sich .....	366
353	106	Henry Norrey .....	365	356	424	Charles Lichter .....	365
353	114	W. Richter .....	366	356	454	Julius Fellzer .....	365
354	144	Terence Donaghue .....	365	357	588	Samuel Brewelley .....	366
354	147	J. W. Ofleheider* .....	366	357	609	Henry Cornett .....	365
354	170	John Terf .....	365	357	595	A. H. Altmann .....	366
354	182	A. Killburn .....	367	358	772	Louis Wakerting .....	366
354	186	O. B. Roberts .....	365	359	852	Christ. Decky .....	366
354	199	Alfred Gilschlickie .....	365	359	875	John H. Tranel .....	364
354	205	August Haffe .....	365	359	889	John M. Harming .....	364
354	233	Henry Carning .....	365	359	892	John O'Sheaney .....	364
354	235	William Cordin .....	365	359	893	John O'Delany .....	364

\* These names appear in contestant's list; the number occurring counted for both candidates.



EXHIBIT No. 2.—*District No. 26*—Continued.

Page where name is found on poll-book.	Number of name.	Name.	Page where ballot is found counted for Hogan.	Page where name is found on poll-book.	Number of name.	Name.	Page where ballot is found counted for Hogan.
359	917	A. H. Hinman .....	366	360	1088	Jesse B. Proddy .....	364
359	925	Lawrence Kruill.....	364	360	1103	H. Smeatz.....	365
359	929	John Tobin* .....	365	361	1199	Alexander Ranler.....	365
359	944	Rob't Kosmaley .....	366	361	1181	Henry Rathbone.....	365
359	950	S. J. Arnold .....	365	361	1184	Fred. Koerner .....	365
360	985	Joseph Voeker.....	365	362	1275	W. Garterell .....	366
360	991	Stephen Blackie .....	365	362	1298	O. M. Brady .....	365
360	1007	G. L. M. Crary.....	365	362	1310	James O. Hanlon .....	366

\* This name appears in contestant's list; the number occurring counted for both candidates.

## EXHIBIT No. 3.

*District No. 27.*

Page where name is found on poll-book.	Number of name.	Name.	Page where ballot is found counted for Hogan.	Page where name is found on poll-book.	Number of name.	Name.	Page where ballot is found counted for Hogan.
413	4	W. Regal* .....	421	415	291	William Shea .....	422
414	25	William Desmond .....	421	417	441	A. K. Thseldkin .....	421
414	23	Hy Maman .....	421	417	442	Casper Kehann* .....	422
414	33	Edward Marx .....	421	417	471	J. F. Krieger .....	421
414	65	Jacob Randy .....	422	417	472	James Lillard .....	422
414	68	Joseph Sharp .....	422	417	474	John Cieson .....	422
414	82	John Seperhurd .....	422	417	509	Mich'l Downey .....	422
414	95	Hy Schensman .....	421	417	531	Philip Keary .....	420
414	96	Bernard Hesper .....	421	417	564	J. Y. Steinhoper .....	420
414	99	Philip Odenwelder.....	422	417	568	Theo. Schader .....	421
414	103	J. B. Seahart .....	421	417	572	Mic'l Lorenz .....	421
414	104	Paul Wagoner .....	421	418	591	I. Derknide .....	421
414	111	A. J. Pagnagle .....	421	418	600	Pat Hulehan .....	421
414	115	John Falen .....	421	418	608	Pat Shanihan .....	421
414	118	R. Luden .....	421	418	616	H. Buthopp .....	420
414	146	Herman Schillman .....	421	418	651	Peter Vandeman .....	421
414	148	Henry Sands .....	421	418	664	Jacob Hickel .....	420
415	205	Antone Krinest .....	421	418	684	Hy Coleman.....	420
415	227	John Hetge .....	421	418	693	J. H. Liten .....	421
415	239	Frank Vasser .....	421	419	731	C. H. Hafeklatz .....	421
415	248	Gustav Balthus .....	421	420	894	Chas. F. Carroll .....	420
415	260	J. M. Reed .....	421	420	861	Thos. Flood .....	421
415	264	James Morrison .....	420	416	421	Jacob Osborg* .....	420
415	269	Chauncey Shannon .....	421				

\* These names appear in contestant's list, the numbers occurring for both candidates.



## EXHIBIT No. 4.

## District No. 28.

Page where name is found on poll-book.	Number of name.	Name.	Page where vote is counted for Hogan	Page where name is found on poll-book.	Number of name.	Name.	Page where vote is counted for Hogan.
467	8	Henry Pleirmeyer . . . .	480	469	303	J. Von Ahmen . . . . .	481
467	11	Michael McGrath . . . . .	481	469	325	A. Lambkin . . . . .	481
467	15	Henry Fuitter . . . . .	481	469	358	J. Tyroff . . . . .	481
467	17	John Standborthy . . . . .	480	469	387	James Roden . . . . .	481
467	19	William Honiger . . . . .	480	469	409	Louis Premore . . . . .	480
467	20	Simon Obecke . . . . .	479	469	410	John S. Caule . . . . .	480
467	31	John Funy . . . . .	480	470	445	R. A. Eland . . . . .	481
467	32	Jeremiah Mayna . . . . .	480	470	447	George Henneson . . . . .	481
467	39	John Cari . . . . .	479	470	474	J. Tierhoff . . . . .	481
467	81	Thomas Roddy . . . . .	479	470	498	B. Roentgon . . . . .	481
467	82	David Lore . . . . .	480	470	516	H. Raxmeyer . . . . .	480
467	92	August Springmeyer . . . .	480	471	589	Jenny Watts . . . . .	480
467	106	Henry Greitens . . . . .	479	471	630	K. Keshuley . . . . .	481
467	120	William Nail . . . . .	479	471	649	Joe Goriach . . . . .	481
467	133	James Kilmartin . . . . .	479	471	711	G. Vohrenberg . . . . .	479
467	139	Edward Maloney . . . . .	480	472	775	John P. Rumber . . . . .	479
468	150	Edward George . . . . .	480	472	801	M. Goering . . . . .	480
468	172	Henry Brelt . . . . .	481	472	840	Charles Kingsley . . . . .	480
468	173	B. H. Brinsmur . . . . .	481	473	848	James M. Imany . . . . .	479
468	185	Nicholas Gragin . . . . .	481	473	892	P. Slafferty . . . . .	478
468	206	Charles Stiver . . . . .	479	474	982	Joe Kirknoner . . . . .	480
468	217	J. B. Herbis . . . . .	379	475	1164	W. Ladiger . . . . .	479
468	220	F. Lenkwitte . . . . .	480	475	1200	F. Grossman* . . . . .	480
468	244	James Finn . . . . .	479	475	1257	George Hargue* . . . . .	478
468	277	H. Sissna . . . . .	481	476	1330	H. Oremus* . . . . .	480
469	288	Lawrence Manning . . . .	480	476	1384	John H. Corre* . . . . .	480

\* These names appear in contestant's list, the numbers occurring for both candidates.

## MINORITY REPORT.

The undersigned being unable to concur in either the arguments, illustrations, or conclusions of the majority of the committee; feeling also that injustice has been done to the contestant, and that he has in reality been elected to the position of representative in the fortieth Congress, by the majority of the legal vote cast at the election for first congressional district of Missouri, November 6, 1866, proceed as briefly as possible to present a synopsis of the case for the information of the House.

The majority in their report present the extracts from the constitution and laws of Missouri under which this election was held, and then proceed to take up points as made by contestant which they summarily decide against him, and declare the sitting member entitled to the seat. We shall examine these positions as made, and add suggestions which we deem vital to a full understanding of the case; we shall also present important and vital considerations in behalf of contestant which,



although presented for the action of the committee by the case as made before them, have, by some strange oversight, been wholly ignored or omitted in making up the report of the majority, and which omissions would, if allowed by committee, have shown the majority for contestant.

We will chiefly follow the arrangement of the majority report, and hence commence with

#### PRECINCT No. 30.

At this precinct the law of Missouri was wholly ignored and set aside by partisans of the sitting member, in direct contravention of its requirements, and by unsworn and unofficial persons; and although the evidence of fraudulent intent is palpable, yet the majority apologize for the wrong, and neither discard the poll wholly, nor yet purge it of the unregistered votes received and counted there for the sitting member. The law provides that a list of the qualified voters shall be made by the officer of registration, who shall certify the same. He is a sworn officer, his duties are defined by law, and he is responsible for his acts.

The law requires his list to be made in duplicate, both certified, one to be deposited with the county clerk to be kept among the archives of the court, the other to be delivered to one of the judges of the election, (if then appointed,) and take his receipt therefor. It is admitted this list was furnished by the register according to law, *but this list was not used according to law to determine who should vote at that election*, but a list was used made by other outside unsworn partisans of the sitting member, said to accord with the list of the registrar, except that it was alphabetized on the second as well as the first letter of the voter's name.

By whom this list was prepared is not shown, except by the testimony of one John Green, who says he suggested its preparation, called those to his house whom he wanted to participate in it; says two or three of the judges and clerks were present assisting, but carefully avoided the mention of any name as present. He says, page 139:

#### Cross-examination:

Question. When was this experiment made in reference to the number of votes that could be cast in a specified time?—Answer. This was the day after they got the books. This was done principally at my house, as the nearest place. We sat all round a table, and the names under each letter on the attested list were marked in the order in which they should come—for instance: "S," followed by "A," was marked 1; then the next in order alphabetically was marked 2, and so on. The names were called off from that list, and a man wrote them down; then the names were all counted off to see that they agreed. The votes couldn't have all been taken with the certified list, and this change was made so that we could take all the votes.

The committee say the new list was made the day and night preceding the election, and seem to give John Green as the authority, but says it was the day after they got the books, which by law is several days before the election.

It may be proper to inquire who is John Green, who thus figures in preparing a voting list for this precinct? Was he the registrar, commissioned and sworn to perform this delicate duty? No. Was he one of the judges of election who was to receive the legal registered votes? No. Was he one of the clerks of the election, sworn to enter truly the names of voters? No. What connection, then, had he with this matter, legally or officially? None, and he was only a partisan of the sitting member, seeking, by all means, to swell the vote of his party at that election.

What judge of the election was there? It is not stated. Judges of elections are only sworn as such, and for that only when ready to enter on this duty; so also of clerks of election, but none of these are named



as present. *And it is significant that even the registrar was not present at this important revision of his work.* He was close by all the time; could easily have been invited; could have rendered aid in deciphering his own writing; was, moreover, an active partisan also of the sitting member. Why was he not present? Was it not that, being a sworn officer, he could not permit names on that list that were "not duly registered?" This, we think, is the only legitimate inference.

John Henson, registrar, swears, page 165 of the testimony in this case:

I was registering officer of thirtieth election district; I furnished a certified list of voters in that district to judges of election, except some little errors \* \* \* That the judges made a copy of my book is my impression; it was not done in my presence. I delivered my book to one of the judges, as I was authorized to do.

The language of this witness is clear; *he was not present at the making of the copy of his book.* His impression is, it was copied by the judges. Why? He was probably told so by John Green, as the committee are told the same thing; but there is no evidence that any of the judges were present, no names being mentioned; nor would it give vitality or legality to the act if they had all been present and aiding, for the law not only gives no authority for the preparation or use of such list, but explicitly provides for another list to be made by the sworn officer of the law, the registrar, *and certified by him to be a full and true list of the voters registered.* This list, so certified, the judge who gave receipt for it must produce for the use of the judges of election at the opening of the polls, and during the process of the election the judges of election shall mark or write opposite the name of each voter, as his vote is taken, "voted." Thus he may not vote but once; and his name being on this "certified list," *prima facie* he is a voter, and the judge of election may not go behind this, for this list is "certified" as true by the "officer of registration." This new list got up by Green, &c., is said to have been a "true copy" of the original book or "list" furnished by the registrar, yet no one testifies to any examination and comparison thereof except, as Mr. Green says, by counting the names on both lists and finding them to agree in number. Can the committee sanction this method of comparison? Would counting the words verify the copy of a bill, a deed, or any legal instrument? Surely the members of the committee will not try to legalize a list of voters compared by merely counting the names. Further, the list used was not authenticated. The law requires the registrar "shall certify to the list of voters;" this is its authentication. Could it be a legal copy, if even every name on the original was on it, without this authentication? Did any court ever admit as evidence a copy of a deed, even though containing every word of the original, when there was no authentication thereof?

More than this, did ever court admit as evidence a paper purporting to be a copy of an original one, made evidence, which not only was not authenticated but was proven never to have been compared with the original of which it purported to be a copy? nay, more, when the purported copy has been challenged as fraudulent, but is not then produced for comparison with the original, would any court or jury substitute such copy? Assuredly they would not. But the evidence is clear that this official record was substituted by another, claimed to be a copy, but by no one examined and compared, *not even certified by any one as true.* To admit such would be to ignore all the practice of the past.

The committee say, however, that both lists were used during the day of election. The language is: "Both the certified list and the



copy made by the judges were present and were used by the judges and clerks during the election."

The undersigned do not read the testimony in the same way; we recur to respondent's testimony found in H. Mis. Doc. No. 37—testimony in this case.

John Green says, page 138:

The books used at that precinct, at the last election, were drawn up by the judges of election. We compared the newly arranged alphabetical list with the certified list by counting the names on each, and found that they agreed all through.

Gustavus Sessinghaus was duly sworn as a witness on the part of General Pile, and testified as follows:

I am twenty-eight years of age, a merchant, and live at the corner of North Market and Ninth streets. On election day I acted as judge in the thirtieth election district, in the 10th ward. Another man had been appointed, but he declined, and I was appointed in his place. The judges made their returns on the certified lists made by the registering officer. The clerks on election day made use of a true copy, so far as I know, of the certified list. (Page 139.)

It will be seen that the "certified list" was only used to make returns on when election closed; the copy was used during the day of election.

C. J. H. Hamig was duly sworn as a witness on the part of General Pile, and testified as follows:

Am twenty-four years of age, a dyer, and live at 2117 Broadway. I acted as clerk at the thirtieth election precinct last election. They used a copy made from the certified list of the registrar. I know that the copies agreed. I think the judges made their returns on the certified list. (Page 140.)

Here, again, they used the copy; thinks certified list was used for the returns; knows copy agreed with the original, but don't say how he knows it.

None of these witnesses testify as to any use being made, during the election day, of the list furnished by the registrar, although the law, section 17, required that the word "voted" "*be at the time*" written on the "certified list" by the judge of election. No one testifies this was done.

The testimony of M. B. Clark, another of the judges, on page 21, corroborates Sessinghaus, judge, the clerks, and John Green. His testimony is:

Question. Were the original certified registry lists used by the judges on that day?—Answer. They were not.

Q. What were used?—A. The list which the judges received at the county clerk's office was copied, in order that their names might be arranged alphabetically—perhaps it would be proper to say in lexicon order—alphabetized on the second letter as well as the first; that is, if a man by the name of Miner should come to vote on the amended list we could find his name in those letters that commenced with Mi, and the position of those names on the list would be indicated on the list in the margin.

Q. Did the judges use any other list but this that day?—A. The list used was a copy of the list received from the county clerk's office, and the additional list brought in by the registering officer during the day of these sixty or seventy names.

Q. What was done with the certified lists that came from the county clerk—what was done with them? You say the judges did not use them.—A. I can't say where the list was during the day, but it was present a portion of the time, for we referred to it, to ascertain whether some of the names on the list we were using were not on that list, and we found in that instance the copy which we were using seemed to be correct, in so far as these sixty or seventy names were concerned.

Q. Did you compare this alphabetical list as a judge with the certified list, to see that it was correct in every name?—A. I did not.

Q. Do you know any one that did?—A. I know of no one of my own knowledge.

Yet, notwithstanding all, it is assumed by the majority that both lists were in use. We well recollect that, in his oral argument, the sitting member urged this view, seeming chiefly to rely upon the testimony of one other of the clerks, C. P. Gould—testimony, page 137—and the majority of the committee seem also to rely on him to sustain



their position. Gould says: "The books that were used were the return books from the registrar, and they were copied on other sheets and put into alphabetical order, that we might find the names readily." Again he says: "I had the original list in my hands most of the day, and when there was occasion to refer to them I generally did it." But even this man, willing witness as he evidently is, does not swear *that this original list*, which he claims to have held during *most* of the day, was marked "voted," if any list was so marked *at the time*, as the law peremptorily enjoined.

It will not be forgotten by the committee that the respondent, in his verbal argument, tried to prove, by the testimony of this witness, that the original lists only were used during the day of election, and that the new lists were used merely as indexes to find the names on the original, and that on the new lists the names were numbered from No. 1 up, so as to show on what page of the original the name could be found, &c. The idea itself would seem to contradict the object for which the new list was made, but it was supported by no testimony, and no witness refers to it in any such light; doubtless the respondent mistook Mr. Green's statement of the manner of making the new list, by numbering the second letters of the names one, two, three, &c., &c., and his grammatical construction of the word "them," in the above extract from Gould's testimony, was equally unfortunate in trying to refer it to the new lists. Now, we submit that even this does not bear out the assumption that the original was used at all except when some voter presented himself *whose name was not on the sheets they were using*, the "new list;" then they referred to the true or *legal list* to verify the *new or illegal list*; but if this name was on the latter, although he may not have been registered at all, then his vote was taken and unquestioned. No other view can be taken of this. But we will look a little closer into the testimony of this man Gould, who seems quite a willing witness for respondent. He says, page 137: "On the day of the election I was acting as clerk of the election at the thirtieth district. I was merely taking down the names of voters, and copying and numbering the ballots as they were put in." This was all, indeed! Why was he copying the ballots? They were presumed to be secret. Why, or by what authority, was *he copying the ballots*? Possibly he does not mean that much, although he swears to it; but he was "clerk at the election;" he was merely taking down the names of voters as they presented themselves, and entering them and corresponding numbers on the voters' list. Yet, if he was doing this, his time was certainly fully occupied without the addition of holding in his "hands most of the day" the duly certified lists containing some thirteen hundred names, nor was it in his power to compare the lists at all if he wrote down the voters' names as they presented themselves. The whole thing is preposterous. But it must be borne in mind that it is not upon the clerks that the law devolves the duty of examining the list of voters, and writing opposite the names the word "voted," but upon the judges or some one of them; and in the labored examination of this case by the majority, we challenge the production of any evidence that this requirement of the seventeenth section of the law was by any one written "*at the time*" on the legal list, nor, indeed, on any list. The idea suggested by the committee that the new list was prepared and numbered so as to facilitate the finding of the names more readily, when first suggested in his oral argument by the sitting member, seemed so ridiculous that the chairman of the committee asked him if this use of the new list would not retard rather than facilitate voting, by requiring the judge first to examine the new



list to find the page of the old or certified list on which the name was to be found, that we did not expect to find it used again in the official report of the majority. We will only say, however, that the testimony will be searched in vain for any evidence of such intended or actual use of this new list. The majority say "the alphabetical list made by the judges has not been furnished to the committee." Whose fault is it that it has not been? Not the contestant's, surely. He attacked that list as fraudulent in his "notice to contestee." (See No. 14, page 3, alleging that "the certified list of registered voters was not used by the judges and officers of election, nor was the election conducted in accordance therewith.") The respondent's reply to this, on page 9, is rather adroit; he denies that "the certified list of registered voters was not received by the judges and officers of election." The contestant did not say it was "*not received*," but that, being received, "*it was not used*;" and the respondent, by his witnesses, Green, Gould, Sessinghaus, Hamig, and Henson, proves the *preparation and use of another list* than that furnished according to law, and yet does not furnish that list for comparison! The contestant called on the county clerk to produce it on the presumption it would be filed in his office according to law; but it was not in the clerk's office. He summoned Clark, one of the election judges, and his friend. On page 21 his testimony is:

Question. In whose possession are those certified lists now, viz, the original alphabetized copy?—Answer. In the possession of Mr. Sessinghaus, (one of the judges.)

The respondent summoned Mr. Sessinghaus, his friend, but he don't ask him to produce the new list for comparison with the original, nor yet does he furnish it to the committee. What is the legitimate inference? That the comparison would have developed its fraudulent character, and fully justified the contestant in his charge, and which he strongly substantiates by the list of the names of those who voted at that precinct "not duly registered."

This brings us to the next point made in report of the majority, who say of the one hundred and fifty or more names presented by the contestant as not found on original registration, nor yet on the "certified list" received from county clerk and certified as being true copy of original filed with him by the registrar, and which copy in manuscript was in possession of committee: "The committee find one hundred and twenty-four of the names upon the original varied in the spelling and in some instances in the sound, but which the committee believe are the same names." This would still leave some twenty-five names; how do they get to vote? They are not on the original registration, either by analogy of spelling or sound, nor yet on the list certified by the registrar; how, then, were they allowed to vote, if only the names on the certified list were placed on the list gotten up by John Green and others?

But they say again, "five," whom they name, "voted for contestant and are also found on original." If they are on the list of registered voters, then they were entitled to vote for either party. But the majority say again, "forty-two votes for contestant are not on the original, but on voters' list." If so, does that change the position of contestant, that this poll should be thrown out for fraud?

The position assumed by contestant is that these names were put on in fraud; the party friends of the sitting member controlled the registrar; he was his partisan; but these names are not on his list, therefore he is not responsible. The partisan of the sitting member, John Green, and the *confrères* whom he got to his house at night, without the aid of the registrar, to get up a list of voters to be used, and which was used at the election, must have put these forty-two names on the voters' list,



supposing they would vote for the sitting member; but they did not, it seems, do so, but the committee say they voted for the contestant. Does this change its fraudulent character? The majority say, however, "the committee are not prepared to say that these forty-two are not on the original in some form." Nor do we doubt they are to be found on the original, although they may be and probably are among those left off the original certified list by the registrar, but added afterwards when disturbance was made about it, as testified by registrar and several other parties.

We desire, however, to make a few more observations in reference to these lists, and the numbers found registered. The views of the majority on the Anglicising of German names, bad and improper spelling, &c., may all be very correct. We express no opinion, except to ask the same liberal construction be extended to apparent similar discrepancies charged in votes for the contestant, nor have we had the time necessary to go into a very thorough examination of discrepancies either in the spelling or sounds of all the names, although, from a cursory examination, we are satisfied there are hundreds of names voted on both sides not spelled accurately, but examination by those locally familiar will show them merely misspelled, and therefore not to be thrown out in the count. But this is not wholly the case with those under consideration. The contestant in his brief gave a list of names, which he was unable to find, as such, either on original or certified list. The respondent in his brief substituted for these other names supposed to be intended for them, and duly registered. We have examined the brief of the sitting member submitted to the committee, and find he presents ninety-eight names who are registered, and whose names he claims to be intended for that number who voted in other names. Assuming that to be true, what then? Why, there is still left voting for the sitting member forty-six votes, for which he in all his investigations can find no names registered that can be substituted therefor. How came they voting if not registered? The judges would not receive votes unless on the list of voters. These names were not on the certified list furnished to the judges by the registrar, that is clear, as examination of copy of that list certified by county clerk shows. They are not on original registration list presented in Doc. 37, for no name bearing any analogy to them can be found among them. How, then, do they get to vote? Clearly their names must have been put on the additional and unauthorized list of Green used at the election.

But there is one other point in this list as furnished by the sitting member. Among the names he substitutes for unregistered names voted are eighteen persons, all of whom voted in their own proper names, so that either these persons voted twice, or else the eighteen names for which they are substituted are fraudulent votes, like the forty-six for whom no substitutes are found. The contestant, in his replication to contestee's brief and argument, pointed out these discrepancies in written sheets, and added some thirty other names of voters not found registered, and we are a little surprised that the majority of the committee should still assume the substituted names, when it was clearly shown the parties had voted in their own name.

Many of the names claimed by the sitting member to be fairly substituted for other names as voted, and which the majority assume as correct, we are unwilling to recognize as coming within any legal principle heretofore established, but we do not care to extend this investigation further. We have clearly shown, we think, that the mandatory provisions of the constitution and laws of Missouri have been violated and set aside; that the legal list of voters was not used as the law



requires, but another list got up in secret by unknown persons, and apparently partisans of the sitting member, without any authority of law whatever; that the list was not written on "voted," as the law requires. That the new and unauthorized list, although in the hands of the friend and witness of the sitting member, was not produced by him for examination and comparison; and finally that the names of at least sixty-four persons who voted at that precinct are not to be found on the true lists, and, therefore, must have been added to the false or illegal list used on that occasion, thereby clearly showing, in our opinion, sufficient evasion and disobedience of the requirements of the election law of Missouri at the thirtieth election precinct to authorize this committee to advise that the poll list of the thirtieth precinct be thrown out, and not counted for either party, in consonance with all reported decisions, both in Congress and the courts in all analogous cases. In view of all the violations of the law of Missouri, and the positive presence of fraud in this case, how small, how insignificant the violations of law in Pike Township, Ohio, thrown out in the late case of *Delano vs. Morgan*, by this same committee and sustained by the House, simply on the technicality that the law requires three judges to be each electors; one of these judges was alleged to be a deserter, disqualified as an elector, therefore incapable of being a judge, and also that the return did not state all who voted were "electors, as required by law." No fraud alleged or proved, no fraudulent list of voters furnished and used contrary to and in direct contravention of law. The majority, who voted to throw out that precinct and thus remove the sitting member, deliberately say in the report of the same majority which we are reviewing and from which we dissent, "The committee are, therefore, of opinion that it is not shown that there was any fraudulent substitution of voters' names at this precinct." If this is so, then no effort need ever be made to show fraud in any election.

We will only add that thirty or forty other names were furnished by the contestant which seem not to have entered into the calculation of the majority of the committee at all.

But if in accordance with usage this poll is not so tainted with fraud by the clear violations of the law as to demand that it be thrown out of the count entirely, surely the contestant is entitled to have the poll purged of the votes clearly shown not to be registered, or, being registered, who had themselves voted in their own proper names.

The next point made and argued by the majority of the committee is as to the thirty seventh precinct.

The contestant, in his printed brief, pp. 6 and 7, says:

#### II.—PRECINCT NO. 37—DEFECTIVE RETURN.

In precinct No. 37 the return is defective, because not based on registration and accompanied by the list on which the election was conducted. The law requires not only that the registration *shall be made, but shall be returned* to the county court, and that the list used at the election shall be checked, as voted, by the judges, and accompany the return. The original registry is not found in the county clerk's office, (see page 596, printed testimony, No. 21; also page 6,) nor does any copy accompany the return. Both are required to make the return valid. So far as officially appears there was no registration, and hence no election in that precinct.

The section of the law is as follows, viz:

SEC. 14. The officers of registration shall, as soon as may be, deposit with said clerk the original books of registration, which shall be kept and preserved among the records of the court, except when otherwise disposed of as hereinafter directed.

The committee say:

The only evidence before the committee that the original registry list was not



returned is as follows: "No. 21 registration book not returned to clerk's office.—Jas C. Moody, Judge." This certificate is without date, and there is no proof before the committee when it was made.

They then proceed to argue, from the case of *Brockenbrough vs. Cabal*, that because the election laws of some States require votes to be counted and certified within thirty days, such provision is only directory, and votes may as well be counted if returned afterward, &c., and hence they pass this point as not sufficiently proved, &c.

We regret to differ so entirely with the majority upon this point, both as to the fact and the law.

The fact is as stated by contestant above that the certificate of the clerk, the legal custodian of this book of registration, had not been returned to his office, up to the date of his certificate, January 3, 1867. (See page 6 of printed testimony.)

The intent of the statute is very clear, and hence its mandatory character. Persons illegally registering are liable to penalties, and the book of registration is made evidence in the courts.

Hence this book is required to be deposited with the clerk of the county court, and may be used as evidence, &c., according to law. It being important to the contestant, indeed indispensable, to know who were entitled to vote, by being, as the law requires, registered "ten days before the election," he, as the law of Congress required, gave notice with such particularity as was possible of the grounds of his contest, and having served his notice, applied to James C. Moody, judge of the circuit court for St. Louis County, requesting certified copies of necessary papers, among them the registration and certified lists, to be furnished him by the clerk, the custodian thereof. This application is dated December 11, 1866, and is included in the order of Judge Moody to the county clerk, Eager. (See pp. 4 and 5 of record, House Doc. No. 37.) The answer of Samuel W. Eager, clerk, on page 6, is the return to the command of the judge, is dated January 3, 1867, and, enumerating the papers asked for and returned, says:

I have the honor to produce certified copies of the original registration books of districts No. 21 to 42 inclusive, *with the exception of the book of the thirty-seventh district, which book has not been returned to this office.*

Each of these books, as the copies delivered to him by the clerk, are certified to by the judge, beginning at No. 1 on page 178 of the record up to page 596, No. 21, where he certifies, "No. 21 registration book not returned to clerk's office.—James C. Moody, Judge," and then follows in order poll-book of thirty-seventh district.

It is thus fully certified that up to January 3, 1867, at least, the date of Eager's certificate—Moody's being made after—this return had not been made.

The law requires registration shall close at least ten days before the election. The election was November 6; ten days before was, say, October 27, and this certificate is dated January 3, 1867, or say about sixty-eight days after registration closed, and yet the return is not made.

The contestant must close his case. He may allege that any number of the one hundred and sixty-four voters whose votes were received at that precinct were not there on or before the 27th of October, or that they labored under other disabilities; that they took the oath falsely, &c. But how are these things to be proved or disproved? Only by the official registration or certified copy, in accordance with the law of Missouri. But in this case there is neither; being no original, there can be no copy. It is clearly the right of the contestant to have this record; neither he nor the committee can tell without it whether any of these



men were legal voters in Missouri, where registration, under certain conditions precedent, is demanded and *peremptorily required*.

Now, we ask, upon what evidence does the majority of the committee act in receiving as legal votes these one hundred and sixty-four from district No. 37? There is none; for there can be no legal vote without registration, and there is absolutely no evidence of registration in that district. This conduct is in most noticeable contrast with the rejection by the majority of the committee of certain precincts in Kentucky, in the case of *McKee vs. Young*, where the grounds of objection in no way touched the merits or fairness of the election.

The sitting member, in his verbal argument before the committee, admitted that he had no doubt that when Eager, clerk, made the certificate the book had not then been returned, but, when asked by the chairman of the committee if he knew it had been returned since, he said he did not know whether it had or not.

If it had been returned he could have procured a copy and thus refuted the allegation. Failing to supply the lack, and especially when his own party friends, the registrar and the county clerk, are the only ones that could supply the list, the case on all principles of justice must be given against him, and this precinct ought to be thrown out.

In the case of *Blair vs. Barrett*, the contestant alleged the absence of evidence on the record that the judges had been sworn; it was held by the committee and the House that it was the duty of the contestee to supply this evidence; failing in which this precinct was thrown out, and Barrett lost his seat. This ruling has been since affirmed. This has frequently been held a necessary part of the return. The Missouri law makes the evidence of registration essential to the right to vote, and the preservation of this evidence in a given office an imperative requirement. Can the committee set aside this provision?

The majority of the committee have held in the recent case of *Delano vs. Morgan*, that while the law of Ohio specifically required the return should show that all who voted were "electors," and as this designation was omitted in the certificate of return, the omission was fatal. The Missouri law requires registration; requires the evidence thereof to be filed with the clerk; requires the voters name to be marked "voted" on the list, and this list to be returned. *None of these absolutely mandatory provisions are complied with*, and yet the majority of this committee fail to see this fatal omission, which practically shields a party friend.

Presuming the attention of the majority had not been directed to the peculiar reasons of this requirement we have given to it this examination, and, in accordance with all analogous precedents, reject the poll, and shall therefore, in our summary of result, deduct it from each of the parties. The vote at that precinct was: Pile, 94; Hogan, 69.

We next refer, although not next in the order of the majority, to "the after-sunset vote." The majority do not undertake to settle the legality of this vote, nor indeed to express any opinion upon it, yet retain the return for the twenty-sixth precinct, because there only the voting was continued without any formal closing of the polls. We are unwilling to unite in this acquiescence, believing it would make a very bad precedent, and lead to injurious consequences. The election law of Missouri requires the polls to be opened "from sunrise to sunset." The question of the legality of votes taken after sunset, as far as our knowledge goes, has never been adjudicated in that State; indeed we do not find that any after-sunset vote had ever before been counted in the State. When the return was made from the twenty-sixth precinct of a night vote, the clerk and judges passing on, or rather footing up, the returns from the pre-



cincts heard an argument from one gentleman on the subject; after which the clerk and one county judge agreed to receive this return and certify it up to the secretary of state. The other county judge united in the certificate to the general return, but refused to certify the "after-sunset vote," and entered his protest against its reception. (See testimony of John F. Long, county judge, page 33.) The other election judges generally refused to count and certify the night vote, but when at last they did send it up to the clerk from the twenty-eighth precinct he refused to receive and include it in returns. The secretary of state, in his official certificate filed with the committee, evidently does not regard the night vote as of equal validity with the day vote, for he enumerates them separately, and specifically presents the former in red ink, in contradistinction with the latter, thus:

Willam A. Pile received 6,587 votes before sunset; 141 votes after sunset; total vote before and after sunset, 6,728.

John Hogan received 6,417 votes before sunset; 93 votes after sunset; total votes before and after sunset, 6,510.

Assuredly if he deemed after-sunset vote as legal as the day vote, he would have made no such distinction. The undersigned deem the argument in contestant's brief, on this subject, conclusive; but are unwilling, even tacitly, to admit the legality of such votes.

We state freely, if the night vote is to be counted at all it should all be counted, and the evidence is clear to our minds that the contestant would have a large majority; but, unwilling to open such a door to fraud, we, without any hesitation, reject the whole after-sunset vote, and trust the majority will, on further examination, adopt our conclusion.

The next point we note in the report of the majority is the argument in reference to illegal, because "unregistered votes," charged by contestant to have been polled at certain precincts for the sitting member, and by him repelled on the ground that many of these names, being written by the voters in German, may have been misspelled in writing them in English.

We are free to admit that such errors may occur; nor do we understand the contestant to claim such; for from the cursory examination we have been able to give this matter, we should infer there were several hundred such misspelled names in these lists, mostly made by apparently very ignorant and incompetent registrars and election clerks. *But these are not what contestant complains of, but that names are marked voted for which no reasonably analogous name can be found among those who are registered.* To present a few instances as illustrations, we quote: the contestant charges that "Charles S. Maury," who votes, is not registered. The contestee says this name should be "Charles L. Malony." Possibly this mistake might have been made, and would be admitted, but that "Chas. L. Malony" voted in his own name; hence, he either voted twice or this substitution should not be made. So, also, "George Beckman," it is charged, is not registered. Contestee says this name is not registered, but it is intended for "George Buchanan," who is registered.

There is not sufficient analogy to admit them, and, besides, "George Buchanan" swears that he did not vote at all, because, when he handed his ticket to the judge to vote for contestant, it was refused because his name was already marked on the list "voted," doubtless the fraudulent vote of George Beckman, above.

We could present many other illustrations, but forbear. The majority enter into a learned argument on language, especially the changing of German into English names, &c. We do not feel disposed to go into



those matters. The majority seem, however, satisfactorily to account to themselves for the great discrepancies, both in sound and spelling, of the names presented; and conclude by the general statement that the committee find all the names charged by contestant against the contestee sufficiently indicated on the registration lists; hence not fraudulent.

But, singularly enough, they say, "The committee are unable to find the names of those voting for contestant." "German idioms;" "bad spelling;" "taking down names by sounds;" "copying names," and consequent liability to mistake—none of these can be applied to cure names voting for contestant furnished by contestee. They are all fraudulent votes, which the committee are unable to find registered, or even indicated by similar names. The contestant has had no sufficient opportunity to examine or attempt the correction of grave errors, to illustrate which we select some from the list, viz: "John P. Lorkin" is registered John H. Linkin; "R. A. W. Krenshaw" is registered as Raw Crenshaw. Now, while the committee could find no names, as registered, to stand for those names and others, we can but admire the great stretch of charity which when the name "Gotlieb Steindler," as voted, is claimed to be not registered, they can readily assume that it should be "G. Spinelun," or else "Gottleib Sepmellen." When "H. Winhold" is the name as voted, claimed not to be registered, the committee find the name clearly indicated by "H. Memolett," or surely by the name "Henry Meinholett." When the name of "Henry Gutledge," as voted, is claimed not to be registered, the committee can readily find his name substituted by "Herman Hetlage," or "Herman R. Hettage." But enough of this; we might supply many such from the brief of contestee.

We close this point with a single remark: All, without an exception, of the registering officers were all the partisan friends of the sitting member, and were all opposed to the contestant. They registered whom they pleased, rejected whom they pleased, and no appeal lay from their decision to any one but themselves. They arranged and made up the voting lists, and no one could vote unless his name was on these lists, except at the thirtieth precinct, where another list was made and used; and it is in evidence that hundreds of the friends of the contestant were fraudulently left off these lists and thus these votes refused by partisan judges, while, by the improper and grossly ignorant way in which these lists were gotten up, thousands of good citizens and legally registered voters could not vote at all. And while, in addition to all this, nearly all the judges and clerks of election were also the partisans of the sitting member, and in scarcely any of the precincts was there more than one of the judges or officers of the election the friend of the contestant, how then, we ask, was it possible to poll any fraudulent or unregistered votes for him? The idea is clearly preposterous. Much more likely is it that, as so many fraudulent appliances were brought to bear to carry this election, these judges and clerks would write names wrong, or throw out, as was done in many cases, votes for contestant which should legally have been counted for him.

We wholly dissent from the conclusions of the majority, both in regard to the imperfectly indicated names voted for sitting member and the alleged votes claimed to have been fraudulently given for the contestant.

The majority of the committee refer very briefly to the action of the county court of St. Louis County, Missouri, in the arrangements of the voting places or precincts of first congressional district. It may be very true, as they suggest, that Congress cannot arrange these matters, but it is also true that Congress may not sanction the outrage of depriving large numbers of legal voters of their franchise, by providing only



a few places in which votes can be deposited, and making it necessary for such multitudes to crowd the polls where not half can vote. In New York a poll has to be provided for each five hundred or six hundred voters; in Philadelphia for each four hundred voters; while in the case under consideration there had to be an average of about 2,000 votes polled at the four precincts complained of, and to increase delay the "lists" of voters were, by ignorant and unscrupulous partisans, so badly spelled and arranged, as that only a few could vote, as for instance at one precinct, out of a registered vote of over 2,200, only 901 votes were polled in the day, and it is in evidence that men had to stand in line from four to six hours in order to get up to the judges at all.

The committee say this acts as much against one party as the other. It would if the election were honestly conducted, but it is in evidence that peculiar facilities were furnished one party, while hundreds of the other party could not be found on the voters' lists, and hence were not allowed to vote, although registered.

The tickets in size and color of paper showed for which party the vote would be cast.

The majority of the committee see nothing fraudulent in restricting the voting places of a congressional district to twenty-one precincts, although one of these districts, with its registrars, three judges, and two clerks, has but thirty-five voters in its area, and nine other precincts, each with registrars, judges, and clerks, have an average of less than one hundred and fifty voters each, while four other voting places contain about one-half of the entire registered vote of the district!

As this matter, however, is very clearly presented on page 9 of contestant's brief, we append the extract:

The practical result was that while for polling 16,947 votes twenty-one voting places were allowed, 7,842 of these votes, lacking only 631 of being half of all the district, were required to be taken, if at all, in these four precincts, constituting each a legislative district. This was known to be wholly impracticable.

*Hence 2,935 votes, nearly two-fifths of the registered vote assigned to these four precincts, were not polled.* Compare this with the other precincts. The whole unpolled registered vote in the congressional district was 3,945, of which it appears 2,935 were in these four democratic precincts, leaving but 1,010 for the remaining seventeen precincts, an average deficit of about 735 at each of these polls, against an average deficit of say 60, at the other 17.

We deem it very clear from this succinct statement that not only was great injustice done to the citizens by this arrangement, but the contestant lost by it hundreds of votes, and it was one of the many appliances of this election by which the people were deprived of a full and legal opportunity of voting for the member they preferred. The election became distinctly partisan:

1. By districting the city in the interest of the friends of the sitting member.

2. By improper use of lists made by partisan friends of sitting member, not in accordance with the law of Missouri, and directly in the interest of the sitting member.

3. By closing at sunset, in accordance with the law of Missouri, certain polling places which might have given a majority for contestant, but keeping open, without authority of law, other polling places which gave, or helped to give, a majority to sitting member.

The contestant claimed before the committee, and in his brief, that twenty-five duly qualified voters were placed upon the rejected list, not for any of the disfranchising clauses or acts of the Missouri constitution or registration laws, but from the corrupt action of the registrar,



who was himself a candidate for office, and because these men would not vote for him, (the registrar.)

The affidavits of these men are published with the testimony; they were subjected to cross-examination by counsel for the sitting member, (much of it very impertinent and irrelevant,) and nothing disloyal proved against them. Some of these men had borne arms during the late war in defense of the country; others were old men. Some, as one of them testifies of himself, "had been regarded as radicals" by their neighbors. One, the registrar says, is "a loyal and qualified voter," but still refuses him his proper place upon the qualified list; others, after being registered as qualified, were put on the rejected list, without having received the notice required by law; and others of them are still found on the qualified list, but their votes for the contestant rejected by the judges.

All these we hold to be legal votes for contestant, in accordance with the principles laid down in the argument of this committee this Congress, in the case of *Burch vs. Van Horn*, page 6 of the report.

So holding, we shall count these 25 votes for the contestant, not willing to acquiesce in the summary disposition of this appeal by the majority, who deem it "unnecessary to investigate in detail the case of each of these persons, because, whether admitted or rejected, their votes could not vary the result." So we might state in reference to any contested case; if we reject all parts because they separately will not vary the result, then the labors of the election committee may be very much decreased, by assuming a conclusion at the outset, and then finding facts to sustain it.

If this is to be the result the country should be advised of it in advance; but believing, as we do, that these details are material and do vary the result, we enter into this investigation.

There is another point in this case, to which the majority have made no allusion at all; and as it is proper, and does "vary the result," we will bring it to the attention of both the committee and the House. We refer to "votes of legally registered and qualified voters, who were refused by the judges of election, because their names were fraudulently or by accident omitted from the 'certified lists' although duly registered." These names are found on the brief of the contestant, from pages 17 to 22, inclusive.

On these pages are to be found the names of one hundred and twenty-nine persons, all of whom swear that they were registered voters duly qualified. The page where they are registered is given, with the name and page of testimony where affidavit is given. After notice and cross-examination, they swear they got to the judges after great effort, gave in their votes, and were refused because their names were not found on the voters' list, as by law they should have been, and that their votes were for contestant.

It was a great outrage of these partisan registrars to leave off the voters' list, which they "certify" to be "a true list" of registered voters, so many names who finally succeeded in getting up to the judges and handing in their ballots, to be returned to them with the announcement, "name cannot be found."

But will Congress sanction this outrage? Will the committee, who are fully authorized to do justice, after the contestant has been at the trouble and expense of procuring this legal testimony, now ignore all past decisions as to the legal admissibility of votes illegally refused, and thus sanction the improper action of these "officers of registration" who have made such unlawful returns? We trust not. These are to all intents and purposes votes given for contestant; they should have



been received and counted by the judges. They should be counted by the committee and the House. Indeed, we might assume that the failure to include them was a mere oversight, but for the too evident determination of the committee, as exhibited in the majority report, to give the sitting member the benefit of the votes of such of his friends as stood in the same situation. Because the report of the majority in this very case sustains our position. Votes were allowed at the thirtieth precinct, "legally registered," but omitted from the "certified list." These names the registrar at that precinct felt compelled to add by an amended list made during the day of election. The majority say:

In the opinion of the committee it would have been an error to have refused to receive the votes of those persons who were properly registered, although their names were not on the certified list.

So we think also; and when they reached the judges, handed in their ballots, and duly testify, after notice, for whom they intended to vote, it would be a grave error to refuse to add these to the vote of contestant.

The last point made by the majority of the committee, which we shall notice, is that relative to the affidavits of persons who declared they each voted at the twenty-third precinct for contestant, but whose votes were counted for sitting member. This, though last, is not the least of the gross frauds of this election. The majority reject these affidavits because there was no proper notice, no cross-examination, and because many of these voters are shown to have voted for both. We are not prepared to say that these affidavits are, in accordance with the strict rules of evidence, legal. But there are some circumstances in the case we would refer to. On page 3 of testimony will be found, in contestant's notice of contest, this specification, viz:

16th. I charge that, in every election precinct of said first congressional district, you received, by a false and fraudulent count, more votes than were really cast for you, and I shall insist on a recount of all the ballots cast at the election. I charge that, after ballots were cast for me by legal voters, and put into the ballot-boxes of the several election precincts, said ballots were, in a great many instances, abstracted and not counted for me, but other ballots fraudulently put into the said boxes, corresponding to the number and names of persons who had voted for me, as if they had voted for you, which last-named fraudulent ballots were counted for you, and I shall demand a comparison of all the ballots with the names and number of voters on the poll-books.

This is a notice pretty clear and definite, and was so regarded by sitting member, and hence on page 9 of testimony we have his replication as follows, viz:

In answer to the sixteenth ground, as set forth in said Hogan's notice of contest, this respondent denies that there was any false or fraudulent count of votes, or that he has been benefited by any such count.

Respondent denies that any ballots cast for said Hogan were abstracted and not counted, or that other ballots were put into said boxes corresponding to the number and names of persons who had voted for said Hogan. This respondent has no objection to the demand of said Hogan for an examination of all the ballots, as he proposes in his notice.

No names are furnished, because, the ballot being secret, the names of those whose ballots were changed could not certainly be ascertained until the comparison of all the ballots with the names and numbers of the voters on the poll-books was completed and furnished.

That this had been done in several precincts was believed from the comparisons instituted; hence the sixteenth specification. The response of the sitting member is also clear in denial that he has been benefited by any such count, and says he has no objection to the demand for comparison, &c., &c. Thus it becomes a simple issue of fact, and can only be determined by comparing the names and numbers as voted with the numbers as counted for each candidate.



The clerk, being by law the custodian of election returns, ballots, &c., on the mandate of the circuit judge, in accordance with the law of Congress, examined and certified the numbers on the ballots counted for each candidate as returned by the judges of election, and by comparing these numbers with corresponding numbers on the poll-list, it is readily perceived for whom each party voted. Many well known and influential citizens are by this comparison found apparently voting for the sitting member, their ballots being counted for him. Publication was made in the newspapers of St. Louis of this fact, and these gentlemen, to the number of about one hundred, sent their affidavits to the contestant to assure him of the fact that *they did not vote for the sitting member, but did vote, each and all of them, for contestant.*

This is simply a question of fact. The tickets were printed; party lines were very closely drawn; these gentlemen are vouched for as intelligent lawyers, bankers, merchants, doctors, mechanics, of well known political proclivities. When they swear they knew for whom they voted, and when the official certificate of the clerk of the county court certified to the numbers as counted for the sitting member, and numbers corresponding to each of these names are found to have been counted for the sitting member, and hence made fraudulently to increase his apparent vote, cross-examination could not change these facts. But the majority say, as a reason for not entering into a full examination, "*many of these are shown to have voted for both*" candidates. Suppose this is so; *is it not palpable that all of these votes should have been counted for contestant, and none of them for the sitting member?* Is it not equally palpable that if any of them are counted for the sitting member, they are so counted in fraud, none of these persons having voted for him at that election? And is it not equally clear that any such votes counted for him, included in his aggregate, are not honest votes and should be deducted from him by the committee and the House? But when it is shown that all of these votes are counted for the sitting member, that not one was voted for him, and that he receives his apparent majority by this fraudulent count of votes, not only not given for him but actually given against him, and for his competitor, the contestant, then it becomes at once the duty of the committee, as guardians of the purity of the elections of members of the House, promptly to decide against the sitting member, although he is of the party in the majority, rather than try by mere legal technicalities to surround and shield the multitudinous frauds developed by the investigations of this case.

The party in the majority both of the committee and the House can, as a mere party matter, better afford to be just to a wronged constituency, even if in being so they unseat one of an overwhelming party majority, than, by his retention, give their sanction to such wrongs as have been perpetrated in this case, and thus make precedents, which will "assuredly return to plague the inventors" and those who sanction and sustain them.

On page 247 of the record of this case is the certificate of the judges at precinct No. 23 that the whole vote polled there was 1,016, of which, as by the count, William A. Pile had 381, and John Hogan had 635. Then follow the numbers on the ballots for each; those numbers for John Hogan count up 632, and one not numbered; those for William A. Pile on pages 249 and 250 count up exactly 381, and yet over 100 votes sworn to have been for Hogan are found, all and each, counted among the numbers for William A. Pile, and necessary to make the number 381. We need say no more on this subject, except to intimate that, by this fraudulent transfer of votes from the contestant, to



whom they were all legally given, to the sitting member, for whom none of them were given, about (of itself independent of all the other frauds we have examined and commented on) makes the majority by which it is claimed he is elected. That is to say, deduct from the aggregate of sitting member's vote, the votes counted fraudulently for him at precinct No. 23, and add these to the number returned for the contestant, and the latter will have the majority, independent of all the other considerations we have presented.

But in our view of the case, even assuming that according to the strict rules of evidence the matter of the twenty-third precinct cannot now be taken into consideration, in the absence of the frauds which in the opinion of the minority of this committee entirely invalidate the election in this district of Missouri, the contestant is entitled to his seat as having received the majority of the legal votes virtually polled at the election, November 6, 1866, and now proceed, in conclusion, to present the following summaries or recapitulation, supposing the question of fraud to be left out of the case altogether for the present purpose.

The majority make up no account of results; they take the original certificate; they accept the conclusion that the sitting member is elected, and report accordingly. We will do otherwise, so the House can itself judge who was legally elected. We cannot see how it is possible, in view of all precedents, not to reject poll No. 30, for clear violations of law and palpable fraud.

Our synopsis of the case, based on this rejection, is as follows, viz:

Total vote, as per certificate of secretary of state of Missouri, as above:

William A. Pile received before sunset .....	6, 587
William A. Pile received after sunset .....	141
Total vote before and after sunset .....	6, 728

From this deduct as per our view:

Total vote, precinct No. 30 .....	828
Total vote, precinct No. 37 .....	94
Total after sunset vote .....	141
	<hr/>
	1, 063
	<hr/>
	5, 665

John Hogan received before sunset .....	6, 417
John Hogan received after sunset .....	93

Total vote before and after sunset .....	6, 510
--	--------

From this deduct as per above:

Total vote, thirtieth precinct .....	368
Total vote, thirty-seventh precinct .....	69
Total vote after sunset .....	93
	<hr/>
	530
	<hr/>
	5, 980

To this we add:

Votes registered, proved to have got up to the judges to vote for contestant, but refused because the judges said their names could not be found on certified lists .....	129
Illegally refused by registrars .....	25
	<hr/>
	6, 134
	<hr/>
Hogan's majority .....	469
	<hr/>



Or second method, on the assumption, that notwithstanding established precedents, *in this case* the vote of a precinct for palpable violations of law will not be thrown out, but that the poll will be purged of such fraudulent votes as cannot be questioned, we present this summary, viz:

William A. Pile, number of votes as above .....	6, 728
Deduct fraudulent at No. 30.....	64
Total vote at No. 37.....	94
Night vote .....	141
	<hr/>
	299
	<hr/>
	6, 429
John Hogan, total as above .....	6, 510
Deduct total vote at No. 37 .....	69
Deduct night vote.....	93
	<hr/>
	162
	<hr/>
	6, 348
Add as in first statement .....	154
	<hr/>
	6, 502
	<hr/>
Hogan's majority.....	73
	<hr/>

The minority of the Committee on Elections, after carefully reviewing this case, respectfully report that they cannot concur in the report of the majority of said committee thereon, and for themselves respectfully report to the House of Representatives that in their opinion the manner of registering voters, of polling votes, and of conducting the election by the officers having charge thereof, was not in strict accordance, but in direct evasion and violation of the laws of Missouri regulating the registration of voters and conducting elections; also, that a sufficient number of fraudulent votes were cast for William A. Pile, the sitting member, to invalidate his election.

JOHN W. CHANLER,  
M. C. KERR,  
*Minority of Committee.*

*Additional views by Mr. Kerr, a member of committee, to be appended to report of minority.*

The undersigned, while uniting in the report of the minority of the committee, feels it due to himself, as well as to the questions presented, to add the following to the detailed statements therein made:

Necessary absence during the preparation by my colleague of the minority report precluded my giving much active aid in its arrangement.

The report of the majority contains lists of names alleged by the contestant to be fraudulent or unregistered names who voted and were counted for contestee, and help, therefore, to make up the majority counted for him, but which lists, the sitting member claims, are not such, but are merely misspelled, or being written by sound by the poll clerks, were so written as to appear to be different names from those who really voted, and hence, he proceeds to furnish what he claims to be the true names, and the page where they are registered.

The undersigned, having given some attention to this matter, will now proceed to an examination of these lists from the brief of sitting member, being all the lists furnished to the committee, as far as the



undersigned is informed, and he will also examine other lists, also furnished in the brief of the sitting member, of names which he claims are not to be found registered, but who voted for contestant.

As my examination will be of the names in the brief of the sitting member, I shall, therefore, refer to the pages thereof, because the report of the majority where these names are reproduced has not been printed, and if there are other names besides those, not having seen them, have not had opportunity for comparison and examination.

On page 10 of brief of contestant there are set forth seventeen names with the number of each vote for contestee claimed to be illegal, because "not duly registered." On page 2 of brief of contestee, to each of these there is appended what is claimed to be a synonymous or somewhat analogous name, as found on the registration lists; yet the committee will remember the contestant claimed that these seventeen names were not on the original, but fraudulently added to the "certified list" furnished for the use of the judges, and thus permitted to vote, although not registered; and if this is so they were not entitled to vote, and hence should be deducted from the vote of contestee.

I am aware the majority in their report profess to find, by a learned examination of the German names and the translation into English, something they claim to be analogous to some of those registered. This is a very strained construction, and I would think it very doubtful whether, in the light of this argument, a false or fraudulent vote could ever hereafter be proven. Not acquiescing in these distinctions, and not being able to find these parties on the original registration, I must claim they are not there, and hence are fraudulent.

Singular, however, it is that while the majority enter into this argument to prove the names that voted for the sitting member are not fraudulent, they readily charge the eighteen names which contestee presents on page 6 of his brief to have voted for contestant as fraudulent, "which they are unable to find registered," but which are registered with the very slightest kind of variations in spelling, which I will now point out, giving the name as in brief of contestee, with name and page as registered.

Name in the brief, page 6.	Name as registered.	Page.
Patrick Lagea .....	Patrick Leggett .....	282
Philar Thomas .....	Thomas Phelan .....	281
Thomas Karaw .....	Thomas Kearney .....	286
S. J. Bunker .....	S. J. Punshon .....	292
C. T. Comrad .....	Have not been able to find.	
Thorna Kalligar .....	Thomas Gallagher .....	287
James W. Nurph .....	Joseph William Kircher .....	279
Henry J. Harrison .....	Thomas Harrison .....	293
Tom Yule .....	J. A. Yore .....	294
John P. Lorkin .....	John P. Linking .....	278
* Matthew Blunch .....	Name illegible; 16th and Franklin av. .	285
* Plunket Matthews. On certified list, residence, 16 and Fra. av.		323
Sullivan Bath .....	Bath Sullivan .....	284
L. A. Morthy .....	Leslie A. Moffit .....	284
R. A. W. Krenshaw .....	R. A. W. Crenshaw .....	290
Thomas H. Criffin .....	Thomas H. Griffith .....	287
Georges Allen .....	Anton Borroz .....	293
R. F. Bropt .....	Richard Y. Brophy .....	277
Daniel Delpher .....	Daniel Devlin .....	282

\* Evidently same person.



Thus seventeen of these false names vanish, and leave only *one* to be counted against contestant; and for that it would be very easy much more nearly to identify a name than in the cases of many of those assumed for contestee.

I next take pages 2 and 3 of brief of sitting member in reply to page 10 of contestant relative to precinct No. 26. Contestant presents sixty-one erroneous names who voted for the contestee at this precinct. For these he presents some names which, under all the circumstances, may be assumed as so nearly synonymous or identical as to be admitted. As for instance:

James D. M. Coff, may be assumed to be James D. McCaff; John Williamson, may be assumed to be John Wilkenson; August Regerman, may be assumed to be August Breuggeman; Herman Vendrat, may be assumed to be Herman Bendral; Lewis Casiger, may be assumed to be Lewis Kassehagen; Thomas Nidersheek, may be assumed to be Thomas Kindischeshek; Henry Frieselman, may be assumed to be Henry Fredman; James M. Seete, may be assumed to be James M. Leeld; John Icy, may be assumed to be John Erse; and so of several others presented in brief of sitting member; but for many of those charged as fraudulent there are no names substituted, and for many others he substitutes names as the proper ones, but examination develops the fact that these parties so substituted have voted in their own proper names, and this proved that they were not the names so claimed.

I now proceed to exemplify this statement. J. C. Dow is not registered; J. C. Atwood will not substitute Henry Reckrath not registered; contestee claims this name is a misprint, and should be Henry Bockrath; this latter name is registered; he also voted No. 600, so he cannot be so substituted; Martin Miser is not registered; Francis Reyseger is said to be a misprint, and should be substituted by John F. Reyseer, who is registered, but he casts vote 465, hence is not the man; Charles S. Maury is not registered, but this name, it is claimed, should be Charles L. Malony, and this might do, but that Charles L. Malony's vote is No. 347; George Beekman is not registered, yet is claimed to be George Buchanan, but is not, for he votes himself No 529; Charles Springer is not registered, no substitute found; Charles A. Spalhin, not registered; Hickman Sheeley, not registered; Ferd. Wohling, not registered; Ferd. Wallendy, it is claimed, is here intended, but he voted No. 797; Adam Schaffner, not registered; John Tobin is not registered; Pat. Kenihan is not registered; Pat Kinney, it is claimed, is here intended, but Pat. Kinney in his own name casts his vote No. 905, so he is not the man; W. A. Reamer is not registered, but is claimed to be either W. A. Raymond or W. J. Rerner; both of these names are found on certified list. Are they on original? But which is the right man? The name is like neither in sound nor spelling; moreover, one of them votes No. 1,176, as Chas. A. Raymond.

John Sisley is claimed to be Q. R. Siesta on the certified list, or John R. Siesle, p. 338 original registration. I do not find the substituted name on page 338.

J. F. Sherburn is not registered; Fred. Gibbatch not registered; Michael Williams, not registered; J. H. Buckstuff, not registered; Michael Cregan, not registered; Fred Woofslager, not registered.

It will be perceived that after allowing all for which he claims to have found any name registered to substitute, except where the parties so substituted have voted in their own proper names, there are still left at this precinct, to be deducted from return of sitting member, twenty-one



votes, as improperly counted for him—all these votes being counted for the sitting member.

To have this precinct complete, I now examine the claim of the sitting member adopted by the majority of committee, that in this precinct many names not found registered voted for the contestant, although the registrar and the two active judges, who took in all the votes, were active partisans of sitting member and equally active opponents of contestant; it is not, therefore easily to be perceived how he or his friends could get in fraudulent votes, and especially as it is in evidence that very many of his friends were refused their votes, although regularly registered as qualified and unobjectionable.

But I take up contestee's list, on pages 6 and 7 :

Name as given in brief.	Name as registered.	Page.
Thomas Garrity.....	Thomas Geraghty.....	336
Charles W. Dutton.....	Chas. L. Dunham.....	336
B. P. Lennox.....	B. P. Lennox.....	345
Thomas Mackavelly.....	Thomas McEvily.....	330
C. H. Rohlman.....	C. H. Ruhlmann.....	332
Marshal Beaudrau.....	Marshal Boudreaux.....	343
Christian Whispin.....	Christ. Wissman.....	335
H. W. Dickhamer.....	H. W. Dickhoener.....	330
Abraham Taffer.....	Abraham Tuffender.....	339
Henry Norre.....	Heinrich Nune.....	332
W. Richter.....	W. C. Riter.....	338
Terrance Donaghue.....	Terrence Donohue.....	333
J. W. Offeheidter.....	F. W. Aufderheide.....	339
John Terf.....	John Taaffe.....	350
A. Killburn.....	A. Killmer.....	339
O. B. Roberts.....	Oby Robirds.....	341
Alfred Gilschlickie.....	Adalbert Ryehlicki.....	344
Henry Carning.....	Henry Carney.....	339
William Cordin.....	William Curtin.....	346
Charles H. Stalles.....	Charles S. Stelle.....	349
James Dowe.....	James Dore.....	332
Z. Roderick.....	Z. Roderies.....	336
Francis Boehler.....	Francis Bechler.....	340
Fred. A. Weiniger.....	Fred. G. Wenige.....	343
Wilkinson Edwards.....	Edward Wilkerson.....	332
John Filibert.....	John Philibert.....	341
Joseph Mackaway.....	Joseph McAway.....	332
George Sich.....	George Lich.....	347
Charles Lichter.....	Charles Richter.....	348
Julius Feller.....	Julius Pfulzer.....	335

Thus all these assumed fraudulent votes for contestant are shown to be duly registered, and scarcely more than a variation of a letter found. Yet how ready the majority to charge all these to contestant, while so easily passing over those of the sitting member.

I next proceed to consider the names as found on page 12 of brief of contestant, and replied to on page 4 of brief of sitting member, as voted at precinct twenty-seven.

Hy. Mentzerodt, not registered; G. H. Goeffring, not registered; John Seiver, not registered; John Sentroff, not registered; Jacob Brockless, not registered; Philipp Obermiller, not registered; P. Overstulz, jr., not registered; Charles Fininger, not registered; Charles Reedsing, not registered; F. Vettner, not registered; J. J. Obaum, not registered; John Wilsler, not registered; A. Mizenzag, not registered; J. Cout, not registered; Fred. Lemer, not registered; Jacob Osborg, not registered; George Mehter, not registered; George Wilfred, not registered; Peter



Extreter, not registered; P. G. Lesmington, not registered; H. Musenweth, not registered; David Wilkening, not registered; Charles Wachter, not registered; Henry Traber, not registered; Andrew Weiss, not registered; Andrew Wiest, not registered.

The sitting member in his brief presents no names as registered to substitute for any of these names.

Phil. Overstultz is claimed to be Philip Oberschutz; Gotlieb Shindler is claimed to be Gottlieb Sepmellem. H. Blatkel is not registered, but August Plaeke is sought to be substituted; but he is the same person whose vote is No. 456 as August Peke, hence cannot be substituted.

H. Leker is not registered; he is claimed to be Hunrick Luker, but this cannot be, as Hy. Luke, no doubt the same person, votes No. 675, hence cannot be substituted.

J. B. Kronemire is not registered, but it is claimed this is intended for J. P. Gronemeier, registered page 400. There is no J. P. Gronemiere registered on page 400, or any other page, that I can find. There are, however, registered on page 400, Henry Gronemeyer and also William Gronemeyer, but neither of these can be substituted, for the former voted in his own name as No. 556, and the latter as No. 793, both for sitting member.

August Emptke is not registered; August Tink, or August Temke, doubtless both meant for same man, is claimed to be intended for the above name, but as vote No. 375 is given for sitting member by H. H. Tremker, no doubt another variation of same name as Trenke, there being no other such name registered, I presume Emptke will be admitted as fraudulent.

Thus are presented thirty-one names, none of which are registered, and for which no names are satisfactorily substituted. Will it still be held that these votes also be counted for sitting member? I trust not.

I now direct attention, in reference to this twenty-seventh district, to the statement in brief of sitting member, page 7, as to names voted for contestant "not found registered:"

Name as in brief.	Name as registered.	Page.
H. Regal .....	Wallace C. Royal .....	399
William Desmond .....	On certified list No. 461, Demund, William; as on register, William Leman.	411
Hy. Muman .....	Herman Meiners .....	391
Jacob Randy .....	Jacob Runder .....	394
Joseph Sharp .....	John Scheipers .....	401
John Seperhurd .....	John Shephard .....	394
Hy. Schensman .....	H. Schrman .....	388
Bernard Hesper .....	Hesper Bernhardt .....	389
Philip Odenwelder .....	Ph. Oberwinde .....	423
J. B. Seahart .....	Blank on original registration, Wash street, between Fifteenth and Sixteenth; on certified list, J. G. Seubert, Wash street, between Fifteenth and Sixteenth.	
Paul Wagoner .....	Pauls Wagner .....	393
A. J. Pagnagle .....	H. J. Tengnugle .....	404
John Falen .....	John Phelam .....	409
R. Lunden .....	H. Lucke .....	393
Henry Sands .....	Certified list No. 1809, Sandt, Henry; registered list, Henry Sanott.	400
Anton Krinest .....	Antors Kraynert .....	389
John Hetge .....	John B. Heet .....	395
Frank Vasser .....	Frank Vossel .....	389
Gustav Balthus .....	Ch. Balthes .....	391
J. M. Reed .....	John H. Reid .....	392
James Morrison .....	James Morris .....	409
Chauncey Shannon .....	Francis Shannon .....	407
William Shea .....	William Shay .....	409



Thus each of these names is accounted for without doing violence to any. It is indeed singular how slight the variations are, and I may remark here that there are hundreds of names voting for sitting member, and unquestioned by contestant, with much more palpable deviations than any of these; but as it manifestly was but error in spelling names, no notice has been taken, where two similar names could be found.

I next proceed to precinct No. 28, charged in brief of contestant on page 13, and replied to by sitting member in his brief at page 5:

Henryx Stitgers, not registered; no substitute found.

J. H. Bode, not registered; claimed to be J. H. Bockla or J. H. Bodu, but the latter's vote is No. 562, so he is not a proper substitute.

W. Fall, not registered; M. Slitzer, not registered; John H. Lunders, not registered; F. W. Leibing, not registered; P. Rosenbun, not registered; F. H. Furnegest, not registered; P. Sable, not registered; C. Lutman, not registered; P. G. Schrader, not registered; Conrad Hans, not registered; H. Oremus, not registered; H. Keffer, not registered; Chas. Kramer, not registered; W. Klatzman, not registered; H. Gerble, not registered; Wm. Edgart, not registered; P. Grossman, not registered; Wm. Breanard, not registered.

These names, as such, are not registered, hence not eligible as voters. The sitting member does not present any names to be substituted for them. I am unwilling to recognize them as properly substituted, and hence count them as fraudulent and illegal votes for contestee.

The following names at this precinct are attempted to be substituted, viz:

T. M. Coxwater, not registered; claimed to be T. M. Kattwasser; but this name is not found on the registered list, only on certified list, where it is placed fraudulently.

Henry Guttedge, not registered, but claimed to be Herman Hettage, or supposed to be the same name as Herman B. Hettage; but this man's vote is No. 1196, so he cannot be substituted.

John Basse, not registered; claimed to be John H. Boose, or John H. Bosse. This, however, cannot be the man, as his vote is No. 1444; the name there spelled Jno. H. Boonce.

Thus in this precinct there are twenty-three illegal votes for sitting member, even allowing all others to have been substituted; but many of them are so far-fetched, the legal rule in such cases has to be strained.

While, however, the majority are willing so far to strain construction as to recognize similarity in many of these names, for the benefit of the contestee, they have no toleration for the slight errors in spelling names voted for contestant; they put all down as fraudulent votes; therefore I shall now proceed to an examination of those names presented in brief of sitting member, page 8, "as unfound and misspelled," &c., &c.

Name as in brief.	Name as in register.	Page.
Henry Pliermeyer .....	Henry Plossmeier .....	459
Michael McGrath .....	Michael McGrath .....	461
Henry Fuitier .....	Henry Fleiter .....	458
John Stundborthy .....	John Sandbothe .....	447
William Honiger .....	William Hunnacke .....	458
John Funy .....	John Feeny .....	446
Simon Obecke .....	H. Overbeck .....	448
Jeremiah Mayna .....	Jeremiah Meany .....	450
John Cari .....	John Carroll .....	454
Thomas Roddy .....	Thomas Redda .....	453



Name as in brief.	Name as in register.	Page.
August Springemyer.....	August Spingelmeier.....	452
Henry Greitens.....	Henry Goertens.....	464
William Nail.....	William Noll.....	452
James Kilmartin.....	James Gilmartin.....	459
Edward Maloney.....	Edward Moloney.....	460
Edward George.....	Edward Joyce.....	448
Henry Brett.....	Henry Butt.....	462
B. H. Brinsmer.....	B. H. Bremmer.....	449
Nicholas Gragin.....	Nicholas Greagan.....	450
J. B. Herbis.....	F. B. Herbers.....	447
F. Lenkwitter.....	F. H. Dulkawith.....	448
H. Sissna.....	S. H. Susz.....	447
James Finn.....	James Flynn.....	491
Lawrence Manning.....	Lawrence Manahan.....	498

Thus all these are shown to be mere incidental discrepancies in spelling, with no substantial difference. There being among all the names charged to the contestant but a solitary one for which names unmistakable are not found duly registered, I now sum those clearly found against the sitting member, viz :

	Votes.
Precinct No. 25 .....	17
Precinct No. 26 .....	21
Precinct No. 27 .....	30
Precinct No. 28 : .....	23

Making a total of ..... 91

Which, if deducted from the sitting member, with the statement of the account in the report of the minority, will leave the contestant elected by a handsome majority.

On pages three to five, inclusive, the contestant presents a list of some one hundred and fifty names, which he claims afford evidence that the voters' list made up by John Green and others for the thirtieth precinct, *and used there*, contained unregistered names, names not on the "certified list" of which they professed to give a copy but did not compare except, as Mr. Green says, "by counting the names on each"—names which are not to be found on the original list of registered voters in evidence in this case. (H. Mis. Doc. 37, p. 518.)

Now, as the claim of fraud is involved in this case, and goes to the validity of this poll, it is proper to examine it with care.

The sitting member in his brief, pp. 11, 12, 13, furnishes what he claims to be true names for most of these. The contestant replied, and alleged that many of these names could not be thus substituted, because there was no analogy either in spelling or sound; and because many of the names so claimed to be properly substituted *had themselves voted in their own proper registered names*.

Here the pleadings closed and the committee took the case for examination. The majority present Exhibits A and B as the results of their examinations, and draw therefrom conclusions which have already been commented on by the minority. In Exhibit A there are twenty-one names voted for which the majority find no substitute, yet they do not admit any fraud, nor do they even purge the poll and deduct these admitted illegal votes from sitting member. Beside these not found, most of the names presented by contestant in his reply, as having them-



selves voted in their own names, are still continued as properly substituted, notwithstanding. Their names are:

Henry Schur, claimed to be Heurick Seuer; but who votes in same name vote No. 922.

H. P. Krollman, claimed to be Henry R. Nollman; but he votes No. 794 as H. A. Bollman, the initial letter N being made a B.

J. H. Gerheide, claimed to be G. H. Waerhard or J. H. Woerheide, voted, J. Waerheide, No. 29.

J. Upenlauder, claimed to be C. L. Openlander or C. S. Appenlander; but votes No. 570 as J. L. Operlander, the name on certified list.

J. Hickmeier, claimed to be Johan Knickmeyer; but he votes No. 1073 as H. Knickmeyer.

L. Joulse, claimed to be Louis Tahler. This man votes No. 581 as Louis Tinger.

F. Burkoper, claimed to be Fred Barkhoefer. His vote is No. 711, as Fred Buckhoefer.

J. J. Rubleman, claimed to be John G. Rubleman; but his vote is No. 440 as J. S. Rubleman.

John H. Bodie, claimed to be John H. Budde. He, however, gives vote No. 414 as J. H. Brode.

August Staddingle, claimed to be Augustus Handinger; but this man's vote is No. 367 as N. Andecker.

H. Craring is claimed to be H. Kramme; but he gives vote No. 406 as A. Cramer.

J. H. Creamer, claimed to be F. H. Kreamer. If this is him, then his vote No. 92 in name of Henry Kreamer had been given before.

Fred Cornles, claimed to be Frederick Conrad; but he gives vote No. 360 as Fred Conant.

W. J. Henry, claimed to be William T. Henry. There is given by this man vote 835 as Temporius Henry.

William Ehlert, claimed to be Henry Ehrler; but he votes No. 944 as Henry Eller.

Charles Straube, claimed to be Charles Straube. Possibly it is the same, as it is the only one of that name registered; but he having given vote No. 146, could not vote again. This shows the book was not marked "voted" at the time.

Thus sixteen of these names are not to be substituted for those who voted without being registered. Will they be deducted?

Some of the names on brief of sitting member as substitutes, when shown by contestant to have been voted, have been left off of exhibit A, and other names quite as dissimilar are presented in lieu; and what is still more singular, the name — Withman, claimed in contestant's brief, page 12, as a proper substitute for the name Henry Wittman, when shown by contestant to have himself voted, is left off by the committee, who now substitute the name of Henry Witland or Henry Willand, as the proper one, but then charge in Exhibit B, page 11, the very same A. Withman, formerly good as a substitute, as an illegal, because unregistered, vote for contestant. A. Withman, however, is registered. (See below Exhibit B.)

I cannot, even with these discrepancies, leave Exhibit A, and thus tacitly admit that many of the substituted names are properly to be so recognized. Many of them may be passed over, although in doing this the legal maxim has to be very much stretched; but, surely, no lawyer will assume even proximate similarity in the following names from this exhibit:

Hy. Mullenhorse, to be Henrick Keillinghorst.



Anton Walker, to be Norton Wordor.

Chris Wenhorst, to be Fritz Windhirst.

John Huckensiter, to be John Hergender.

Reichard Besserly, to be Richard Boeswetter.

\* Frank Sumers, to be Frank Webster.

August Outman, to be August Katlonder.

Fred. Ban, to be Fredrick Kohn, or Fredrick Drand. Which (?)

F. W. Oglemiller, to be Fredrick Obermeier.

William Richs, to be William Raree.

Henry Fice, to be Henry Piper, or Pierce.

H. Cartner, to be Hudson E. Caskener.

Gerhard Lacklieder, to be Gerhard F. Suchleben.

H. Rieper, to be Henry Ruppert, or Robert.

Henry Taake, to be Henry Frick.

Mathias Herman, to be Mathias Flomann, or Taman.

William Bolkenhosst, to be William Walkerhorst.

Rudolph Gauseman, to be R. Hausman.

Henry Rollcutter, to be H. William Bullkvetter.

I have thus selected nineteen names, which under no construction I think can be assumed to be the same as the names voted, and are, in my judgment, therefore properly charged as illegal votes, and should, with the others, be deducted in a purge of this poll. Many more I do not recognize as sufficient, but will submit them to the judgment of the House.

But these fifty-six votes must clearly be deducted as fraudulent. The contestant in his closing argument submitted some fifty or more other unregistered names, but they do not appear in the exhibits of the majority. Why is this? Do they intend to ignore them wholly? The contestant in charging fraud in the preparation of an illegal voting list, suggests names as voted not on the true list; why not account for these as well as the others?

I have only been able to get one page of this additional list, where I find the following fourteen names as having voted, chiefly for sitting member, the other votes not entered for either, but as I cannot find them either entered on original registration, or on the "certified list," from which the copy used in voting purported to have been made, they are clearly fraudulent, and if the whole poll is not thrown out, which in my judgment should be, must at least, with those above, be deducted in purging the poll.

No. of vote.	Name as voted.	For whom counted.	Page.
778	John H. Nierman .....	Wm. A. Pile .....	547
797	Hamon Hanscutter .....	Number not found entered .....	.....
803	Christ Pectus .....	Wm. A. Pile .....	547
813	Fred'k Berkemeyer .....	do .....	549
823	Wm. Swartze .....	do .....	549
829	John Beckham .....	do .....	549
863	Henry Barkhoefer .....	Number not entered .....	.....
857	John Crosby .....	Wm. A. Pile .....	548
869	Wm. Honeker .....	do .....	548
873	Fred Devine .....	Number not entered .....	.....
893	M. Ruland .....	Wm. A. Pile .....	547
1046	Christian Ring .....	do .....	547
1114	George Coney .....	Number not entered .....	.....
1176	Stephen Kleilli .....	Number not entered .....	.....

\* This is claimed to be an error in transcribing, because it is alleged Sumers lives on Webster street; hence Frank Webster, duly registered, becomes Frank Sumers.



Thus there are nine of these votes counted for sitting member, which in one view should be deducted from him, but all go alike to show the presence of fraud in the preparation of the new list, and hence add to the reasons for throwing out the entire poll.

To furnish an illustration of the manner in which the majority of the committee substitutes one name for another, I present the following from Exhibit A:

John G. Eskendorf is assumed to be J. G. Muskendorf.

John W. Elfenden is assumed to be John W. Evenden.

Chris Babbidick is assumed to be Christ Rubenick.

Frank Horstrider is assumed to be Frank H. Hohnstrohn.

William W. Woersheidt is assumed to be William W. Worstel.

E. W. Wieshammer is assumed to be G. W. Wiesehamn.

A. C. Stevens is assumed to be Augustus C. Stifel.

These are sufficient to show with what charity the majority willingly cover up great discrepancies on one side, while exacting the closest conformity to spelling on the other. While we are willing, however, that they shall have their own way in the admission of such substitutes, we cannot so readily concur in passing over as true votes for the sitting member those challenged as unregistered, yet for which the sitting member substitutes no name, or substitutes names of parties who have voted themselves in their own name, and thus are conclusively shown, either not to be the parties named, or else, being such, were allowed to vote twice.

The majority of the committee in Exhibit B presents a list "for which no similar names can be found on the registry of precinct No. 30." I proceed to examine these:

Name as given in exhibit.	Name as registered.	Page.
Patrick Cockman .....	Patrick Comfort .....	525
Chas. Sluder .....	Carl Schluter .....	519
Jacob Bromser .....	Jacob J. Broemser .....	531
John Moniken .....	John Moenekes .....	522
Casper Troun .....	Casper Thre; certified list, Casper Thee...	521
E. Fitzmoris .....	E. Fitz Morris .....	523
Samuel Hardeman .....	Samuel Hartman .....	527
H'y Sluder .....	Heinrik Schluter .....	531
William Feeley .....	William Fuly .....	521
Stephen Peffer .....	Stephen Pfefferly .....	519
Bernard Mersman .....	Bernard Musman .....	521
John W. Winn .....	J. M. Winn .....	521
George Hitchman .....	George N. Hinchman .....	530
John F. Cassman .....	John W. Casburn .....	519
E. K. Fassett .....	A. K. Fasset .....	523
W. H. Uhlman .....	Chas. W. Uhlman .....	523
John Pieto .....	John Pietwh .....	519
J. F. Taylor .....	J. F. Tenzler; certified list, J. F. Taylor ..	523
Wm. Weaver .....	William Weaver .....	531
M. B. Taupkins .....	M. B. Tompkins .....	523
Stephen Quanto .....	Stephen Quante .....	531
Bernard Gerefermill .....	Bernard W. Gevermahle .....	520
J. L. Rice .....	John A. S. Rice .....	531
A. Withman .....	— Withman; certified, A. Withman .....	519
Murvin Cooper .....	Marvin Hooper .....	527
C. Woffin .....	H. C. Warriner; certified list, H. C. Warrin ..	521
N. Andecker .....	A. Handinger .....	520
Michael Menon .....	Michael Menaugh; certified list, Michael Nenaugh.	519
Andrew J. Roershaw .....	Andrew J. Kershaw .....	531
G. Gra .....	Gust Graup .....	528



Name as given in exhibit.	Name as registered.	Page.
F. Nicheimm .....	Fred Nutemeier .....	532
Henry Neiyer .....	H. Wilhelm Mirer .....	521
Simon Vodecker .....	S. Bodeker .....	528
A. R. Jude .....	R. L. Juques .....	521
John Stithe .....	A. J. Stalse .....	528
Thomas Deuring .....	Tom H. Drehmas .....	525
J. H. Robgun .....	J. H. Roben; certified list, G. H. Ruben ..	521
P. S. Owendale .....	P. S. Ownby .....	526
L. L. Ashbrook .....	L. Ashbrook .....	533
Frank Coalmeier .....	C. Connemeyer; certified list, Charles Couger ..	526
Louis Tingler .....	Lewis Tauler; certified, Lewis Tahler .....	523
W. H. Maurie .....	W. H. Marian .....	530
James Miller .....	James Miller .....	533
Henry Luntan .....	Henry Lunte .....	521
Thomas Rigway .....	Thomas Reque; certified, Thomas Reganr ..	525
Charles Gemp .....	Charles Kamp .....	531
William Wettage .....	Wilhelm Withers .....	530
Daniel Flint .....	Dan Flynn .....	526
J. M. Bixler .....	Jacob M. Bixlin .....	525
R. P. Cohen .....	R. Piere Cohn .....	523
John Boergelt .....	John Borgett .....	521
Wm. L. Carr .....	Wm. L. Carr .....	533
Mark Maliney .....	Mark Mulluney .....	521
W. Linstrope .....	William Linstroth .....	531
Patrick Hurley .....	Patrick A. Hearn .....	532
George Coloman .....	George Causland .....	532
Charles Kenaugha .....	T. Cavanaugh .....	532
Kirk Dennis .....	Dennis Kirk .....	527
Jasper Herman .....	Herman Jasper .....	527
John Taulberg .....	John Tanksberry .....	526
Anter Ilkman .....	B. A. Hickman .....	525
Clemens Gotwinkle .....	Gottfried Cordez .....	529
Henry Buschamper, probably intended for—	H. Buslekemper .....	531
D. R. Griffin .....	Otis R. Griffin .....	525
W. Lucking .....	William Lewing .....	524
Fred'k Dingsmeyer .....	Fred. Dousmeyer .....	531
James Hurley .....	James Hukey .....	532

Thus all this list furnished by the majority as fraudulent, because un-registered voters for contestant are found to be duly registered, save one or two, and it is remarkable how slight, even in the worst cases, the variations are; indeed, they strikingly contrast with the forced similarity of names presented as true and satisfactory in the interest of the sitting member.

I am not disposed to recognize the four last names on Exhibit A, as duly registered, simply because the numbers are counted for both candidates, for it is evident from the examination given that some numbers are entirely omitted and many others counted twice, and thus numbers may have been counted for both, yet the party voting that number may not be entitled to vote. I deal with the fact that a list not certified to was used at that precinct; that said list was got up in the interest of, and by the partisans of the sitting member, and that if persons voted without being registered, no matter for whom they voted, the evidence of the fraud vitiated the election in that precinct, and hence the poll should be thrown out.

It is due to myself to state, that I have been wholly confined in my examinations to the names as furnished in the brief of the contestant and that of the sitting member, except as to the thirtieth precinct, where alone I have been able to refer to the lists or exhibits of the majority.



One hundred and twenty-nine duly registered voters have personally sworn that they were registered; that they attended the election; that, after hours of delay and trouble, they gave their ballots for the contestant, but their votes were not received because the judges said they could not find the names, although they are on the list and the contestant shows where each is registered; yet the majority do not count these votes for contestant, but they do count for contestee votes of non-registered voters, admitted fraudulently by partisan judges.

The statement of results which closes the report of minority, page 16, with the addition of the fraudulent votes detailed in this separate report, are, in my opinion, correct. I will, however, make this account:

On the assumption that the House, following the majority report, shall not refuse the illegal vote of thirty-seventh precinct and the equally illegal night vote at twenty-sixth precinct, and that the declared majority for sitting member is allowed to be.....	218
I then assume that the fraudulent votes shown by this statement to have been polled for sitting member at precincts twenty-five, twenty-six, twenty-seven, and twenty-eight shall be deducted, amounting to.....	91
Also those at precinct No. 30, being.....	65
	<hr/> 156
Leaving him a total of.....	62
And I assume that the votes <i>at least</i> of those legally registered, but illegally refused to be counted for contestant—being all proved and registry shown—be now counted for him, amounting to.....	129
	<hr/> 129
Thus leaving majority for contestant.....	67
	<hr/> <hr/>

There should in fairness be added twenty-five votes, which the majority do not reject, whose votes for contestant were rejected by registrars from improper motives.

[FIRST REPORT.]

KENTUCKY ELECTION.

A charge of disloyalty against a member elect should be investigated previous to taking the seat.

The House ordered an investigation.

The second report was adopted *nem. con.*

July 9, 1867.—Mr. Dawes, from the Committee of Elections, made the following report:

*The Committee of Elections, to whom were referred, under the resolution of the 3d instant, the credentials of certain gentlemen claiming to be representatives in this House from the State of Kentucky, and also the protest of James B. Beck, A. P. Grover, and Thomas L. Jones, and the motion that the committee be discharged from the further consideration of the credentials of Messrs. Grover and Beck, report:*

That as to the credentials of Mr. Grover, no evidence has been referred to the committee, but the statement has been made under oath before the committee, by Hon. Samuel McKee, that the journals of the legisla-



ture of Kentucky for 1860-'61 will show that Mr. Grover was a senator in that legislature, and voted that Kentucky resist by force the United States in any attempt to coerce the Southern States into obedience.

As to the credentials of Mr. Beck, there has been referred to the committee an unsworn statement of S. M. Adams, of Lexington, Kentucky, that the said Beck was a member of the meeting in Scott County at which the invasion of the State by rebel forces was agreed upon; that he attended the inauguration of the rebel governor Howes by Bragg, as governor of Kentucky, and that he announced in the streets of Lexington, during the occupancy of the State by rebels, that he had accepted a position on the staff of John C. Breckinridge.

As to Thomas L. Jones, there has been referred to the committee a statement of the Honorable Samuel McKee charging said Jones in general terms with disloyalty, based upon a letter addressed to him by one William S. Rankin, of Covington, Kentucky, of date June 29, 1867, of similar import.

Against J. Proctor Knott there is nothing before the committee except the following statement made in the House:

Mr. BENJAMIN. Mr. Speaker, if I understand this question as presented to us now, it is that the credentials of all of the members who present themselves here from the State of Kentucky shall be referred to the Committee of Elections. I believe gentlemen who have been members of this house have protested against the swearing in of certain members of that delegation. I heard on that list, as read by the Clerk, the name of J. Proctor Knott, who claimed to be elected from the fourth congressional district of Kentucky. Mr. Knott was formerly a citizen of Missouri, a resident of the district which I have the honor to represent upon this floor. He resided there, I believe, until 1862 or 1863, when he left that State and moved to Kentucky.

Mr. Knott in 1860, I believe, was elected attorney general of the State of Missouri, and served as such until by an ordinance of the State convention he was ousted. In the winter of 1861, February I believe, the legislature of that State, which was intensely rebel, as every one knows, called a convention for carrying Missouri out of the Union. Mr. Knott was elected as a member of that convention. He served, commencing the 4th of March of that year. He took an active part in the proceedings of that convention. The question of secession was discussed there, and various measures were brought before that convention for the purpose of accomplishing that result. Now, sir, I state here to-day that the records of that convention will show in all its proceedings that Mr. Knott was allied with those who were the most intense in their disloyalty to this government, voting for and sustaining all the measures designed to accomplish the secession of the State of Missouri.

He was attorney general of the State of Missouri. At a subsequent session of the convention all of the State officers were deposed, as you all know, Claib. Jackson being governor. Mr. Knott went out with the rest. In the session of 1862 he did not appear in his seat in the convention. It was declared vacant, and another was elected in his stead.

The disloyalty of Mr. Knott in that State is notorious. His status is as well known as that of any other of those who figured in the rebellion. I do not know there is any gentleman here who protests against his being sworn in as a member; but the facts being as I have stated them, I feel it incumbent upon me to rise in my place and object to the qualification of Mr. Knott as the representative of the fourth congressional district of the State of Kentucky; and, notwithstanding there is no contestant, I believe it is the duty of Congress, when the facts are so well known as in this case, that a person who has occupied the position he has, and taken the grounds he has during this war, shall not be permitted to occupy a seat upon this floor.

I am just informed that the defeated candidate in that district is going to contest the right to the seat. It is a fact I did not before know; but it is necessary the House should know these facts in order to judge of the character of the representatives sent here from that State to represent her in the Congress of the United States.

In reference to John Young Brown there is evidence that he published the following letter:

ELIZABETHTOWN, April 18, 1861.

My attention has been called to the following paragraph, which appeared in your paper of this date:

—*Editor Louisville Courier:*

“JOHN YOUNG BROWN'S POSITION.—This gentlemen, in reply to some searching



interrogatories put to him by Governor Helm, said, in reference to the call of the President for four regiments of volunteers to march against the South: 'I would not send one solitary man to aid that government, and those who volunteer should be shot down in their tracks.'

This ambiguous report of my remarks has, I find, been misunderstood by some who have read it, who construe my language to apply to the government of the Confederate States. What I did say was this:

"Not one man or one dollar will Kentucky furnish Lincoln to aid him in his unholy war against the South. If this northern army shall attempt to cross our borders we will resist it unto the death, and if one man shall be found in our commonwealth to volunteer to join them, he ought, and I believe will be, shot down before he leaves the State."

This was not said in reply to any question propounded by Ex-Governor Helm, as you have stated, and is no more than I frequently uttered publicly and privately prior to my debate with him.

Respectfully,

JOHN YOUNG BROWN.

STATE OF KENTUCKY, *County of Muhlenberg, ss:*

On this 26th day of June, A. D. 1867, before me, a justice of the peace in and for the county and State above named, personally appeared M. J. Roark, who, being by me duly sworn according to law, on his oath doth say that he is a resident of Greenville, county and State above named; and further, that he was present at Morgantown, State of Kentucky, on the 10th day of April, 1867, and heard John Young Brown, in a public speech, declare and avow that he was the author of a letter charged to have been written by him, a copy of which letter is herewith filed, marked B, and made part of this affidavit.

M. J. ROARK.

Sworn to and subscribed before me, by M. J. Roark, this 26th day of June, 1867.

E. G. NEEL,  
*Justice of the Peace, Muhlenberg County.*

STATE OF KENTUCKY, *County of Muhlenberg, ss:*

On this 26th day of June, A. D. 1867, before me, a justice of the peace in and for the county and State above named, personally appeared E. G. Neel, who being by me duly sworn according to law, doth on his oath say that he is a resident of Greenville, State of Kentucky; and further, that he was present at Greenville, State aforesaid, on the 8th day of April, 1867, and heard John Young Brown, then a candidate for Congress in this second congressional district, in a public speech, declare and avow that he was the author and responsible for a letter charged to have been written by him in 1861, which letter is filed herewith as part of this affidavit, and marked B. He also stated in that same public speech he had said nothing in said letter that he was not prepared to defend on that day—i. e., 8th day of April, 1867. He further admitted in same speech that for something said or done by him (Brown) he was in the year 1865 arrested by order of Colonel Sam. Johnson, of Seventeenth Kentucky volunteer cavalry, and confined in jail or prison.

E. G. NEEL.

Sworn to and subscribed before me, by E. G. Neel, this 26th day of June, 1867.

JOHN M. WILLIAMS,  
*Justice of the Peace.*

In reference to L. S. Trimble, there is, among other things referred to the committee, the affidavit of one W. F. Ellistroop, that the said Trimble was a partner of his during the summer and fall of 1861, in the business of forwarding supplies through the federal lines to the Confederate troops.

Against John D. Young there is, among other things, an affidavit of one Willis Hockaday, alleging that in the fall of 1861 he was himself captured and carried a prisoner into the rebel lines by a band of rebels under the command of said Young.

Under the resolutions referring these credentials, the committee are not instructed or authorized to send for persons and papers or otherwise authorized to take testimony, but simply to report at as early a day as practicable.



The committee therefore report the foregoing facts to the House, and await further instructions.

The committee are of opinion that no person who has been engaged in armed hostility to the government of the United States, or who has given aid and comfort to its enemies during the late rebellion, ought to be permitted to be sworn as a member of this House, and that any specific and apparently well-grounded charge of personal disloyalty made against a person claiming a seat as a member of this House ought to be investigated and reported upon before such person is permitted to take the seat; but all charges touching the disloyalty of a constituency in a State in which loyal civil government was not overthrown during the late rebellion, or the illegality of an election, are matters which pertain to a contest in the ordinary way, and should not prevent a person holding a regular certificate from taking his seat.

---

*To the honorable the House of Representatives of the United States:*

Your petitioner, a citizen of the first congressional district of Kentucky, would respectfully state that at the last congressional election in this State he was voted for as the choice of the Union men or loyalists of the said first congressional district to represent them in the fortieth Congress, and that he claims the seat for the following reasons:

1. The notorious disloyalty of the Hon. L. S. Trimble, the democratic candidate, who claims to be elected by a majority of votes, both during the war and since; shown by his aiding and abetting the rebellion, by sending supplies, provisions, medicine, military equipments, and ammunition through the lines into the so-called Confederate States during the war, which supplies were sent in violation of law, &c.; and further shown by his disloyal acts and speeches made during the war and since, particularly in 1863, when he, said Trimble, was arrested and confined by the military authority for his open and avowed opposition to the war, and discouraging enlistments to the federal army; and also in the late canvass for Congress he stated that he had always and did yet oppose raising men or money to suppress the rebellion; and by his declaring that he made it a point, and that he would swear to it, that he would always do what he could to keep out of any position any man who had been in the Lincoln army or wore the blue. The truth of these allegations the petitioner is able to establish by abundant evidence.

2. That Union men were in some localities intimidated and overawed from voting by being threatened and proscribed by the friends of said L. S. Trimble, lately in rebellion against the government, which can be established by evidence.

3. That many unpardoned ex-confederate soldiers and paroled prisoners of war, who had never taken the oath or been included in any amnesty, were allowed and did vote for said L. S. Trimble, in violation of law in such case made and provided, as can be shown by testimony of loyal men.

4. The election was illegally conducted by reason of men being appointed and serving as officers of the election who had been in the rebel army, or who had aided, counseled, or advised the separation of Kentucky from the federal Union by force of arms, or had adhered to those engaged in rebellion, or sympathized with them. Also by a large majority of the officers of the election being democratic and favoring the election of said Trimble, and a very few belonging to the Union party favoring the election of the petitioner; which is in open violation of the State law, which provides that the officers must be chosen equally from the political parties; and the further provision, that no one who counseled, aided, or adhered to the rebellion as aforesaid, shall be considered as belonging to a political party, or competent to act as an officer of election; which facts can also be shown by abundant testimony.

For the reasons above set forth, which (substantially) were embodied in a notice of contest served on the said L. S. Trimble within thirty days after the result of the election was declared by the State board of canvassers, the petitioner respectfully but earnestly protests against said L. S. Trimble, claiming to be the member elect from the first congressional district of Kentucky aforesaid, being sworn in as the member of Congress from said district, and asks that his credentials be referred to the proper Committee of Elections for investigation.

G. G. SYMES.



*Affidavit of William F. Ellithorp.*

STATE OF KENTUCKY, *McCracken County*:

William F. Ellithorp, being duly sworn, deposes and says, that on or about the first day of June, 1861, L. S. Ellithorp & Co., (of which firm this deponent was a member,) D. A. Givens, L. M. Flournoy, and L. S. Trimble formed a copartnership for the purpose of buying<sup>a</sup> bacon, flour, whisky, and other articles in Cincinnati and other places north of the Ohio River and the federal lines, (at that time,) and sending the same south of said lines and selling these purchases to citizens or agents of the so-called Confederate States. That such goods or supplies were contraband of war, and sending them south at that time being in violation of the laws and regulations of the United States.

That said firm, of which L. S. Trimble was a member, continued to send supplies south through the federal lines for the period of twelve or more months. That these smuggling operations of said firm were carried on by said firm under the pretext of supplying laborers then working on a railroad, which the said firm of L. S. Ellithorp & Co. were constructing through the counties of Weakley and Obion, State of Tennessee; said supplies being sent south to different points instead of being consumed by the said laborers on the railroad, (the pretext under which they were sent through the lines.) The said firm purchased and sent south through the federal into the confederate lines large quantities of bacon, flour, whisky, &c., some by the way of Cairo and Columbus; but this route was obstructed so carefully by the federal officers that smuggling, by this route, was soon abandoned. Larger quantities were sent by the Ohio River to Paducah, thence by railroad to the southern line of Kentucky; from thence, (eight miles,) to the Mobile and Ohio railroad; thence to its destination in the South.

Another route, by which the largest amount of supplies were shipped or smuggled through the lines, was by the way of the Ohio and Tennessee River to Danville, Tennessee, the point where the Memphis and Ohio railroad crosses the Tennessee River; thence, by said railroad, to its destination in the confederacy.

The last-mentioned route was the one most used, and the great bulk of the supplies went by it.

Deponent says that on the route by the way of Paducah and railroad to the southern line of Kentucky he had knowledge of some of the shipments through the lines to the South, as he was in the vicinity of the terminus of the Paducah railroad, and within the confederate lines, superintending the work on the railroad then being built by L. S. Ellithorp & Co.; and he gave the transportation of the supplies sent south some attention, and obtained by this route what supplies were needed to feed the laborers then at work for the said L. S. Ellithorp & Co.

Deponent says he has personal knowledge of the sale of twenty or more casks of bacon to the purchasing agents of the confederate government, and the said bacon was sent to Union City, (then a camp of instruction for the confederates;) this was in the month of July or August, 1861; and that the money received for it was sent to one of the members of the smuggling firm in Paducah, Kentucky.

The shipments sent south were generally marked the same as those that came expressly for the use of laborers on the railroad, but this was understood, and when goods designed for the South came I did not generally disturb the arrangements, but let it go to its destination as per orders from Paducah. All money received from the sale of supplies by the package or lots was sent to some one of the firm in Paducah.

The branch of the firm known as L. S. Ellithorp & Co. was composed of L. S. Ellithorp, D. W. Ellithorp, and William F. Ellithorp, (this deponent.) D. W. Ellithorp having gone out of the confederate lines in July, 1861, he gave his attention to the business outside of these lines, and L. S. Ellithorp and this deponent remained in Tennessee until October, 1861, superintending the work on railroad and the forwarding of supplies south to Memphis and other places. An agent was employed to attend to the business south, delivering supplies, collecting and forwarding the proceeds, &c. We, (the two brothers,) could not pass back and forth without exciting suspicion.

I cannot from personal knowledge state just where and to whom many of the supplies were sent after they passed south of the place where I was, except what was told me by my brothers and others employed or connected with the operations. My two brothers are now dead.

D. W. Ellithorp, who, in conjunction with L. S. Trimble, attended to purchasing and forwarding most of the supplies, told me on my return north, (October, 1861,) that the operation was very successful, but the settlement would have to be deferred until some additional returns were received from the South. Most of the books and papers pertaining to this business I have seen, and what have not been destroyed are in my possession. I have talked with all the partners in the smuggling operation in regard to a settlement, but have not as yet succeeded in getting it. L. S. Trimble always admitted of his being a partner, as also did all the persons mentioned in the first part of this affidavit.



This deponent further says that in the years 1861 and 1862 shipments of medicines, cavalry equipments, gray cloth, boots and shoes, coffee, &c., were sent through the lines to the South, in violation of the laws and regulations of the United States. Some of these shipments were managed by myself, and I had cognizance of them all, as I had the entire control of them from the time they reached the north bank of the Ohio River until they passed into Tennessee or the hands of agents on hand to receive them.

There is not probably much written proof of the value, and where shipped and to whom, in existence, as most of it was destroyed to prevent its falling into the hands of federal officers when the offense of smuggling was brought before a military commission.

Deponent says he recollects of one car load of supplies that came to Fulton, the southern end of the railroad that connects it with Paducah, Kentucky, and that he needed one cask of bacon for men on railroad; the agents told him it was all promised, and it must go forward to the South. This was in August, 1861. L. S. Trimble was at the time president of the railroad over which the goods or supplies that came from Paducah were sent, many of which went into the confederacy. He (Trimble) being interested in the profits of said shipments, interposed no objections nor furnished any information that would lead to interference with the goods going forward promptly.

Deponent says that some time in June or July, 1861, said L. S. Trimble went south into the confederacy to look into business with which we were connected. On his return the deponent asked him how he succeeded. He (Trimble) said that all was right, and that all money due us or to become due would be paid.

Deponent further says that during the time said partnership existed as aforesaid there was purchased north of the Ohio River and sent south into the confederate lines, by the route before mentioned, large quantities of provisions and general supplies, which were sold to merchants, speculators, and confederate agents.

Deponent further states that many thousand dollars' worth of quinine, morphine, and a large quantity of sheet copper and articles for the manufacture of cavalry equipments, such as bridle-bits, thread, buckles, buttons, &c.; the exact quantities or value deponent cannot say.

Deponent says the papers in connection with the last-mentioned shipments were all destroyed, but from his connection with the said firm, as a member, he knew such articles were sent through the federal lines.

Deponent says that he has knowledge of large amounts of money that were expended in the early part of these operations in getting along with the United States treasury agents and in getting them to permit the goods to go to Kentucky or points on the Ohio River.

W. F. ELLITHORP.

Subscribed and sworn to before me by W. F. Ellithorp, this 7th day of June, 1867.

WILLIAM GREIF, *Notary Public*.

---

STATE OF KENTUCKY, *McCracken County*, ss :

Charles H. Bonnin, being sworn, states that about the 1st of September, 1861, he was appointed aid to the revenue department, and had charge of the surveyor of customs' office for the port of Paducah; that he remained in charge of the said office until about January 1, 1862; that it was his duty to permit goods to go through the lines into the interior of Kentucky at his discretion, but was allowed only to permit small quantities to the heads of families; that it was against the law and regulations of the Treasury Department to allow goods or merchandise of any kind to go through the military lines then existing; that it was not lawful for any goods to go through the lines unless permitted, in quantities as aforesaid, by the said customs officer. And this affiant states that no goods or merchandise was permitted by the said office during the time he had charge of the same, except family supplies in small quantities, as aforesaid. Affiant further states that there was a firm doing business at Paducah, Kentucky, under the name of F. T. & Co.; that L. S. Trimble and L. M. Flournoy were members of the said firm; that affiant understood said firm were shipping goods, but that no permit was ever granted to said firm to send any goods south while this affiant had charge of said office. Affiant further states that it appears from the records of the said office that said L. S. Trimble & Co. had a permit from the Secretary of the Treasury to bring \$6,000 worth of goods per month to Paducah, but this permit did not give any right to send the goods south of Paducah.

CHAS. H. BONNIN.

Sworn and subscribed before me this 28th of June, 1867, by C. H. Bonnin.

JNO. MARSHALL, *Notary Public*.



*Affidavit of J. T. Bolinger.*

Affiant, J. T. Bolinger, states that he is a citizen of Graves County, Kentucky; that he met with Hon. L. S. Trimble, in the city of Cincinnati, in the summer of 1861, and that said Trimble told affiant that he, Trimble, with others, had formed a partnership, and was then in Cincinnati for the purpose of buying bacon, flour, coffee, sugar, and a general assortment of groceries, which were to be sent south. Affiant further states that Mr. D. Ellithorp, who was with said Trimble, and had the supervision of buying the stock, told affiant at same time that their purchases at that time would be about \$300,000. Large quantities of groceries were shipped to Paducah, Kentucky, and said to be placed in the hands of said Trimble's partners, who were rebels, and who shipped the same, part in the direction of Camp Boon, where there was a large encampment of rebel soldiers, and part in the direction of Union City, where were encamped about ten thousand rebel soldiers. Affiant further states that, in the year 1863, said Trimble announced himself a candidate for Congress. At that time the rebel soldiers had been driven from this part of Kentucky, and the home rebels were very much disheartened and discouraged, and showed a disposition to take the oath of allegiance to the government of the United States and submit to the laws. The disloyal speeches of said Trimble in making the canvass, his course in denouncing the acts of the President, Congress, and those who were engaged in trying to suppress the rebellion, were such that it inflamed anew the public mind, and aroused and rekindled the old fire of treason and rebellion in the people. His speeches had such a poisonous effect on the people that recruiting for the federal army was almost entirely suspended, while enlistments for the confederate army were going on all the time. Times for Union men became terrible. The worst passion against them was aroused in the bosoms of rebels. Union men were driven from their homes, and many of them plundered and robbed of their all. After this canvass the country was overrun with bands of guerillas, whose only object was to rob, plunder, and murder Union men. So disloyal were said Trimble's speeches that he was arrested and imprisoned by the military commander of the district. Affiant further states that the election held in May last for member of Congress in this county was not held in accordance with the laws of Kentucky. Affiant says he has examined the poll-book used at the different precincts at the last congressional election; that there are ten precincts in said county of Graves, and that the law was violated in many of the voting precincts by persons being appointed and serving as officers of the election who have been in the rebel army, or who had aided, counseled, or advised the separation of Kentucky from the federal Union by force of arms, or had adhered to those engaged in rebellion against said government, and that the same number from each political party were not appointed officers of said election.

J. T. BOLINGER.

Sworn and subscribed before me by J. T. Bolinger, this 25th of June, 1867.

JNO. MARSHAL, *Notary Public.*STATE OF KENTUCKY, *McCracken County*, ss :

T. A. Duke, being sworn, says that he is now and has been for ten years a resident of McCracken County, Kentucky; affiant further says that he has examined the poll-books used at the different voting precincts in said county at the last congressional election; that he is acquainted with and knows very near, if not all, the persons appearing on said poll-books as the officers of the election—that is to say, the judges, clerks, and sheriffs, who had charge of conducting the election and receiving the votes; and affiant further states that some of the said officers, three or more, were in the rebel army during the rebellion, and that at least three-fourths, or more than twenty of the twenty-eight officers of the said election, who served in the said county, were men who have, during the late rebellion, aided, counseled, or advised the separation of Kentucky from the federal Union by force of arms, or adhered to those engaged in the said rebellion. That affiant's knowledge is obtained from a personal examination of the said poll-books and acquaintance with the men who were appointed and served as said officers. Affiant states that not over six of the men out of the twenty-eight officers aforesaid belong to or are identified with the Union or republican party in this State.

T. A. DUKE.

Sworn and subscribed before me by T. A. Duke, this 24th of June, 1867.

[SEAL.]

WM. GRIEF, *Notary Public.*STATE OF KENTUCKY, *County of Graves* :

Affiant, Lucian Anderson, states that he is a resident of the county and State above set forth, and was a resident of said county and State in the year 1863; that he is now, and was in the year 1863, acquainted with L. S. Trimble, who now claims to be the



member of Congress elect from this the first congressional district of the State of Kentucky; that at the May term of the Graves circuit court for the year 1863, the said Trimble then being a candidate to represent this district in the thirty-eighth Congress of the United States, he, the said Trimble, made a speech at the court-house, in the town of Mayfield, to a large crowd of persons there assembled, most of whom were rebel sympathizers who had sent for the said Trimble to come up from Paducah and address them on the then question of the rebellion existing against the Constitution and laws of the United States.

Affiant states the said Trimble spoke on the occasion referred to for about two hours; that he denounced the President of the United States, Abraham Lincoln, as a violator of the Constitution in the prosecution of the war against the so-called Confederate States; that he, the President, had deceived and misled the people by saying that he did not intend to interfere with slavery in the State. His whole speech was in denunciation of the government and those who sympathized with it against the rebellion. About the time Trimble closed his speech I asked him to tell the large crowd there assembled whether, if elected to Congress, he would vote men and money to prosecute the war against the rebels in arms against the government of the United States; he for some time endeavored to evade or dodge the question, but affiant states that he pressed the question on him, said Trimble, time and again, and he finally told the people if elected he would not vote a man or a dollar to sustain the armies of the government then in the field to put down the rebellion. Affiant says that the speech infused new life and hope in the rebels, and was calculated to prevent persons from joining the federal army or taking sides with the government of the United States.

Affiant states further that in June, 1863, he met said Trimble at Benton, in Marshall County, Kentucky, when he made to the people of that county the same character of a speech as is above set forth; these are the only places affiant met said Trimble in debate in 1863. A short time after the meeting at Benton affiant learned that said Trimble had been arrested and taken to Henderson, Kentucky, by the military authorities.

LUCIAN ANDERSON.

Sworn to and subscribed before me by Lucian Anderson, June 20, 1867.

W. H. MILLER, *Notary Public*.

STATE OF INDIANA, *Vanderburg County*, ss :

John W. Foster, of the county and State above named, upon his oath, states that, in the month of July, 1863, he was colonel of the sixty-fifth regiment of Indiana volunteers, and that he was in command of that portion of the first congressional district of Kentucky lying east of the Cumberland River; that affiant was instructed by Brigadier General J. T. Boyle, commanding the district of Kentucky, that if L. S. Trimble, then a candidate for a seat in the Congress of the United States, should come into the territory under affiant's command and make disloyal speeches, discouraging enlistments into the army of the United States, opposing the war or the furnishing of any more men or money to suppress the rebellion, that affiant should arrest him and send him to Johnson's Island or through the lines to the South; that the said Trimble did come into the territory under affiant's command, and having upon credible testimony made the speeches of the character mentioned above, in pursuance of said order he was arrested and kept in confinement until after the election, which was held in August, 1863, when he was released by order of the said General Boyle.

And further deponent saith not.

JOHN. W. FOSTER.

Subscribed and sworn to before me this 25th day of June, 1867.

[SEAL.]

BLYTHE HYNES,

*Clerk of Vanderburg Circuit Court.*

WASHINGTON, July 8, 1867.

SIR: It is due to the members of the thirty-ninth Congress, with whom I served during that entire term; to the people whose partiality and confidence accredit me as their representative in the fortieth Congress, and to myself, that I should earnestly and respectfully enter my solemn denial to each and every charge affecting in any way my right to a seat in the fortieth Congress of the United States. Under the law governing contested elections, I have caused the following answer to the annexed notice to be served on G. G. Symes, in this city, by the Sergeant-at-arms, as follows, to wit:

*The answer of L. S. Trimble, elected to the fortieth Congress from the first district of Kentucky, to the notice of G. G. Symes, claiming his seat.*

1st. There are no specific charges or allegations in said notice of the time and place of the commission of the acts spoken of, nor the violations of the laws charged, to



enable this respondent to prove their entire falsity, which he can do if advised of the particular acts relied upon, with the time and place.

2d. He denies that he ever was disloyal to the Constitution of the United States, or the State of Kentucky. He denies aiding or abetting the rebellion, sending supplies, provisions, medicines, military equipments, and ammunition, through the lines into the Confederate States during the war. That the whole of said first paragraph is false and calumnious. He denies making disloyal speeches; that in all of his speeches he advocated the Union, the Constitution, and the enforcement of the laws passed in pursuance thereof, as the last and only hope for the liberties of the people, at all times opposing secession and rebellion.

3d. He denies that Union men were intimidated and overawed from voting by being threatened and proscribed by those lately in rebellion against the government; but he charges that democrats and conservatives were threatened with reconstruction, confiscation, and military rule, if they did not vote against this respondent, and for the said Symes. This was openly and publicly done by Symes and his friends, Anderson and Bollinger, whose affidavits have been taken *ex parte* and filed by said Symes, while last fall Symes was publicly denouncing Congress as a set of jacobins and revolutionists, and when speaking at Johnson meetings, as I am informed.

4th. He denies all charges of illegal voting for him, or the illegality of the election, but says that said election was regularly held in accordance with the Constitution and laws of the State of Kentucky, and the Constitution of the United States. He denies that any person or persons, whether unpardoned exconfederate soldiers or paroled prisoners, voted for him who were not legally entitled to do so, under the Constitution and laws of the State of Kentucky, and asserts that each and all of the electors who cast their votes for him had all the qualifications required for electors for the most numerous branch of the State legislature, so far as he knows, believes, or has any information, and he denies that under any state of the case the majority received by this respondent could have been either overcome or materially reduced by the rejection even of all the votes claimed in the notice as illegal. This respondent received a majority of the votes polled in each and every county composing the said district—respondent receiving 9,787 votes; Symes, 1,780 votes; respondent's majority being 8,007 votes. Respondent denies each and all of the statements contained in the fourth specification in said notice, and denies that any of the judges, sheriffs, or clerks of said election, at any precinct in said district, were either illegally appointed or disqualified from any cause to act as such, or that any law was violated in that regard. He denies that the election laws were violated in any way. Respondent denies that Christian County belongs to that district, or that respondent or Symes received any votes in that County, (Christian.) In conclusion he denies that any of the matters contained in said notice can be sustained by the testimony of any witnesses who have any regard for truth.

Respectfully,

L. S. TRIMBLE.

Hon. SCHUYLER COLFAX,  
*Speaker House of Representatives.*

HOUSE OF REPRESENTATIVES, OFFICE SERGEANT-AT-ARMS,  
July 8, 1867.

I have this day given in hand to the within G. G. Symes a copy of within notice.

N. G. ORDWAY,  
*Sergeant-at-arms House of Representatives.*

In the foregoing answer I have denied every charge contained in the notice. I now most respectfully protest against the right of Congress, or the Committee of Elections, to deprive this respondent of his seat, or to put him upon his defense, upon the *ex parte* and illegal evidence now before the Committee of Elections.

While I deny the truth of the charges, the legality of the *ex parte* affidavits, or the right to read them against me, and assert with confidence that they are malicious, false, and calumnious from the beginning to the end, still I am induced to believe, upon a careful examination by your Committee of Elections of these affidavits of Anderson, Bollinger, Ellithorp, and others, your committee will so decide most of the statements, if admissible in any form, are hearsay, the weakest character of testimony admissible, or known to the law. The conclusions of the witnesses surely are not law anywhere.

Anderson's affidavit discloses the facts that at the time of the making of the speeches by respondent at Mayfield and Benton, in May, 1863, respondent was a candidate for Congress against Anderson: "that a short time after the meeting at Benton, affiant learned that said Trimble had been arrested and taken to Henderson, Kentucky, by the military authorities."

The records show Anderson was admitted to the thirty-eighth Congress, not receiving, however, one-fifth of the legal votes of that district, most of them voting under the influence of threats against their lives, their liberty, and property. Respondent's name was stricken from the poll-books, his friends driven from the polls at the point of the



bayonet, Trimble arrested and taken to Henderson, denied trial on charges being preferred against him, denied communication with any one, black or white, denied the benefit of counsel, or privilege of conferring with them, or their admission to confer with him—all this at the instance and request of Anderson and Bollinger.

Foster's affidavit shows that respondent was released after the election without trial or charges of any kind being preferred against him, or even taking the oath so commonly required at that time, General Boyle ordering respondent to be released unconditionally. Had respondent violated any law or treasury regulation prior to that time, with Anderson and Bollinger in power, he would have been tried and summarily dealt with, probably sharing the fate of many of their innocent victims butchered in cold blood, now sleeping the sleep that knows no waking. The truth is, respondent was arrested for no offense committed at that time, or before, unless it be one to defend the Constitution and the Union as our fathers made it, the constitution and laws of the State of Kentucky, and the rights of the citizens thereof, but that Anderson might be foisted upon the people as their representative against their will, and that Bollinger might more securely follow his avocation of robbing, pillaging, and plundering all who had money and did not descend to his standard of morals and loyalty.

Neither Anderson or Bollinger pretend, in their affidavits, to give the substance of the speeches made by your respondent at Mayfield or Benton, but each gives a few lines without their connection or true meaning, showing clearly their fiendish malice toward this respondent, with their calumnious conclusions, which cannot be evidence anywhere.

Respondent refers you to the following letter of Governor Bramlette to President Lincoln; also the following extracts from the report of General Speed S. Fry, and John Mason Brown, who were appointed by Major General Burbridge to investigate the military affairs in Western Kentucky. The high character and loyalty of these gentlemen will not be questioned.

*Copy of letter from Governor Bramlette to President Lincoln.*

"FRANKFORT, September 2, 1864.

"SIR: Brigadier General Paine, by military order, has banished a number of the best citizens from Western Kentucky. I send you a copy of a letter handed me by Colonel Taylor, which contains a fair statement of the cases of those embraced therein. I have taken pains to inquire into the facts in relation to those banished persons, and learn from good and reliable men that those persons mentioned in the letter of William McKee Hubbard have ever been loyal to the government. The order ought to be forthwith annulled, and those persons restored to their homes and to the property which General Paine and his confederates, Hon. Lucien Anderson and Bollinger, have iniquitously extorted from them. Having instituted some inquiry into the conduct of General Paine, Lucien Anderson, and Bollinger, who it appears are confederate in the system of oppression and plundering instituted in that part of Kentucky—sharing the spoils iniquitously extorted from citizens—I charge him and them, as the chief executive of Kentucky, with a corrupt and oppressive use of his office to oppress unjustly and extort corruptly money and property from the citizens, for their own private gain, and to the disgrace of the service and injury of the public interests. The extent and character of the oppressions and plundering carried on by these men, as related to me by persons cognizant of the facts, is absolutely astounding. I ask, in behalf of justice and the honor of our country, that a military commission, composed of good, brave, just and fearless men, be appointed to inquire into the conduct of these men. I have forborne to complain until I could be assured of the verity of these charges.

"Respectfully,

"THOMAS E. BRAMLETTE,  
"Governor of Kentucky.

"His Excellency A. LINCOLN,

"President of the United States, Washington, D. C."

*Extracts from the report of Generals Speed S. Fry and John M. Brown made to Major General Burbridge, (pages 27 and 31.)*

"It is proper here to state that General Paine was chiefly advised by the following persons, to each of whom particular reference will be made hereafter: Hon. Lucien Anderson, member of Congress, John F. Bollinger.

"Your committee distinctly and deliberately charge that these men, and each of them, except Reda, are guilty of corruption, bribery, and malfeasance in office. The case of Bollinger will be first alluded to as belonging to the trade policy of Brigadier General Paine, during the time that General Paine's tax on tobacco and cotton was in full force. Bollinger (J. T.) shipped, as his own affidavit shows, about one hundred and forty-two hogsheads of tobacco and eighty-four bales of cotton; the total sum paid by him as fees and permits was \$10 as will appear from his own affidavit and that of



J. E. Woodward. But in addition to this peculiar exemption, it will be seen from the sworn statements of L. T. Bradley, master of the government steamer *Convoy*, that a government steamboat was put at Bollinger's disposal, for the purpose of bringing his cotton and tobacco from a point where he had collected it, and that United States soldiers were detailed for the fatigue duty of loading it into the boats; so thoroughly was the community convinced of Anderson's, Bollinger's, Hall's, Reda's and Borthey's collusion with Brigadier General Paine that a lucrative trade in vouchers of loyalty and intercession had already sprung up when your committee arrived, and in some instances heavy sums were paid for permits, which, if admissible, should have been freely granted; if improper, should have been of course refused.

"From page 31 your committee have but briefly alluded to the facts that will appear more fully in the papers which accompany this report. They beg leave to particularize the parties in their judgment as most culpable, and name—

"1st. Hon. Lucien Anderson, a member of Congress. A reference to a statement of this person made before your committee under oath, and numbered 120, clearly shows his complicity with Major Borthey, provost marshal.

"SPEED S. FRY,

"*Brig. Gen. U. S. Volunteers, President Committee.*

"JOHN MASON BROWN,

"*Colonel forty-fifth Kentucky Vol., Mounted Infantry,*  
*"Commanding second Brig. first Div., Mil. Dist. of Kentucky."*

As to the credibility and general character of Anderson and Bollinger, I submit these papers without comment.

William F. Ellithorp says, in his affidavit, that on or about the 1st of June, 1861, L. S. Ellithorp & Co., (of which firm he was a member,) D. A. Gwinn, L. E. Flournoy, and L. S. Trimble formed a partnership for the purpose of, in substance, carrying on a general smuggling business in sundries, bacon, flour, whisky, and other articles through the federal lines, and selling them to the agents of the so-called Confederate States, in violation of the laws and regulations of the Treasury Department then existing. It must be known, for it is a historical fact, that Tennessee at that time was still in the Union; that, not until long after that time Governor Harris and his associates pretended to claim that by a vote of the people, on his (Harris's) proclamation, Tennessee had severed her connection with the federal government. On the 1st of June, 1861, no meeting of the thirty-seventh Congress had taken place, nor did that Congress meet until the 4th of July, 1861. At that time (the 1st of June, 1861) no law had passed Congress in any manner interfering with the commerce between the States, or between Kentucky and Tennessee, or authorizing the President by proclamation so to do. On the 13th day of July, 1861, and August 6, 1861, Congress authorized the President by proclamation to interfere where in his judgment was expedient. On the 16th day of August, 1861, the President issued an order suspending the commercial relations between some of the States, of which you must have judicial knowledge. All of which occurred long after the time Ellithorp says he and others were violating these laws and treasury regulations under them.

The truth is, that on that day, June 1, 1861, respondent was the Union democratic candidate for Congress (the thirty-seventh) against the honorable H. C. Burnett, which canvass he prosecuted almost day and night until the election on the 20th of June, 1861, with all the energy and ability he possessed; being one of the most exciting contests in the State, or that ever occurred in that district; considered a forlorn hope, and after all others had declined the honor, with defeat inevitable, respondent espousing and advocating the cause of the Union party in Kentucky, with their principles and platforms, as announced at Louisville by James Speed and others; opposing secession and rebellion. As to the manner of the perils and dangers attending that canvass I will not speak; it is a part of the political history of that district.

While respondent was thus engaged, Ellithorp and many of the persons who are now slandering and persecuting respondent were engaged in yelling for Jeff. Davis, and swearing respondent ought to be hung for opposing Davis and secession. Many who voted for Symes were engaged in the same business. Ellithorp nowhere states that respondent was present or knew of these transactions, except when the copartnership was formed, on or about the 1st of June, 1861, which is positively false; although there was no law of the character spoken of to be evaded or violated at that time.

It must be apparent to any impartial mind, from the whole tenor of Ellithorp's affidavit, that he establishes beyond cavil his own corruption and infamy; your ignorance of his infamous character alone renders comment necessary. Not content with slandering me, he seeks to render infamous the memory of his dead brothers D. W. and L. S. Ellithorp. D. W. Ellithorp, as I understand, was at that time in the secret service of the United States, and continued in that service until the close of the war, as the rolls in the War Office will show.

To make any statements made by respondent to any one evidence against him, the



witness must show and state all that was said upon the subject at that time; no rule of law can be clearer than this.

For reasons, then, obvious to my friends, and because I had the right to leave, respondent was absent from that section of the country from the 20th of June, 1861, with the exception of four or five days, and remained absent until some two weeks after the occupation of Paducah by General Grant, on the 6th of September, 1861. Even if it were legal for respondent to disprove the statements made in the *ex parte* affidavits already submitted to the committee, by counter affidavits, or to be finally settled in that way, he has had no time to do so, and therefore contents himself for the present with the foregoing, with entire confidence as to the result ending in his triumphant vindication from these calumnies, and his undoubted right to a seat in the fortieth Congress.

I had hoped, before the action of the committee on yesterday, to have met the committee and presented my objections to their action with this communication. I now respectfully ask that the same, with the accompanying papers, be referred to the Committee of Elections.

Respectfully,

L. S. TRIMBLE.

WASHINGTON, D. C., July 9, 1867.

*To the honorable the House of Representatives of the United States :*

The undersigned states that he has given notice, as the law requires, of his intention to contest the right of John Y. Brown to a seat in the fortieth Congress as a representative from the second district of Kentucky, and protests against the swearing in of said Brown, for the reason that he is, and since the commencement of the late rebellion has been, guilty of open and avowed hostility and disloyalty to the government of the United States, and asks that said Brown's credentials may be referred to the Committee of Elections, and the charges against him investigated.

SAMUEL E. SMITH.

(1.)

*Appointment of officers of May election, 1867.—Order.*

FEBRUARY TERM, 1867.

STATE OF KENTUCKY, *Daviess County Court, ss :*

*Ordered,* That the following persons be, and they are hereby, appointed officers of the election ordered to be held on the 4th day of May, 1867, viz :

*Precinct No. 1.*—F. S. Beers, R. S. Price, judges; Wm. Pottinger, clerk; W. H. Perkins, sheriff.

*Precinct No. 2.*—Thomas Monarch, J. A. Scott, judges; B. Burton, clerk; C. N. S Taylor, sheriff.

*Precinct No. 3.*—D. D. Jewell, Wm. Hays, judges; Geo. T. Harves, clerk; W. S. Stone, sheriff.

*Precinct No. 4.*—Geo. Husk, A. J. Philpott, judges; S. H. Jesse, clerk; J. H. Clements, sheriff.

*Precinct No. 5.*—R. C. Barrett, S. B. Ashby, judges; W. S. McMahon, clerk; B. F. Ramsey, sheriff.

*Precinct No. 6.*—A. M. Russell, W. C. Tanner, judges; Ward Payne, clerk; J. G. Cron, sheriff.

*Precinct No. 7.*—W. C. Hayden, A. Spray, judges; G. W. Hall, clerk; J. A. Thompson, sheriff.

*Precinct No. 8.*—J. A. Robertson, Beverly Childers, judges; G. H. Oglesby, clerk; J. S. Goodwin, sheriff.

*Precinct No. 9.*—James Hill, W. H. Talbott, judges; Dr. F. F. Conway, clerk; Joshua Duke, sheriff.

*Precinct No. 10.*—W. P. Mobberly, A. D. Hill, judges; Phœbian Harris, clerk; Elisha Yager, sheriff.

A true copy. Attest :

THOS. C. JONES, *Clerk.*  
By P. T. WATKINS, *Deputy Clerk.*

Deposition of Thomas C. Jones, taken at the circuit court clerk's office, in the city of Owensboro, Friday, the 28th June, 1867, to be read as evidence in the contested election between John Young Brown and Samuel E. Smith before the Congress of the United States of America.

By Smith's attorney :

Question. Are you not the clerk of the Daviess County court?—Answer. I am.



Q. Who were selected and appointed by the county court judges, clerks, and sheriffs for each election precinct, for voting in Daviess County at the last May election for a member to represent us in the fortieth Congress of the United States, and did they act as such?—A. Referred to certified copy of the court's order, marked (1.) In precinct No. 1, by (poll-book) E. C. Bryan, judge, and James C. Hathway, sheriff. Precinct No. 2, J. B. Higgins and Addison Burton, judges. No. 3, Asa Smithers signs the poll-book as judge; R. T. Stewart, sheriff; and Wm. M. Gibson and C. G. Book, as clerk. Precinct No. 4, A. L. Montgomery and Wm. H. Head signed as judges. Precinct No. 5, J. E. Day acted as judge, and H. Haynes as sheriff. Precinct No. 6, Wm. W. Hays and A. May signed for judges. Precinct No. 7, John McKinn and Isaac Willingham signed for judges; Thos. J. Todd, clerk. Precinct No. 8, Matthew Murphy and S. J. Burns signed for judges; Wm. Lashbrook as sheriff. Precinct No. 9, C. W. Porter signed as judge, and John H. Hill as sheriff. Precinct No. 10, Alf. McPherson signed as clerk; no name as sheriff signed.

Q. For the persons named by you specially who acted as officers, was there any order of the county court authorizing them to do so?—A. There was no order other than the certified copy annexed, marked (1.)

Q. Was one of the persons who acted at each place of voting as judge of one political party, and the other judge of the other or opposing political party, and did a like difference exist at each place of voting between the sheriff and clerk of the election?—A. In some precincts they were of the same party. In some they were of different politics. Some of the men acting as officers I do not know their politics.

Q. Did not Mr. John Young Brown, in his public harangue in our city in April last, admit his authorship of the letter dated at Elizabethtown and published in the Louisville Courier, in which it was stated substantially that any man who would volunteer in defense of the federal government ought to be, and he hoped would be, shot down in his tracks?—A. I understood him to admit the authorship of a letter read by Mr. Smith of the same substance as above. Do not know whether it was published in the Courier or not. Never saw the letter.

Q. Do you recollect how the vote stood for each candidate for Congress in this county?—A. I have seen the calculation, but do not recollect the difference.

THOS. C. JONES.

Also, the deposition of J. H. Chissom, taken at the same time and place and for same purpose.

By S. E. Smith's attorney:

Question. Were you present when Mr. John Y. Brown made his public harangue in our city in April last; if so, did he admit his authorship of the letter dated at Elizabethtown and published in the Louisville Courier, in which it was stated, substantially, that any man who would volunteer in defense of the federal government ought to, and he hoped would, be shot down in his tracks; did he attempt to modify or recant any sentiment or wish therein expressed, and was not his letter, when read by him, loudly applauded by his democratic friends?—A. I was present. He admitted that he was the author of that letter, and was loudly applauded by a part of the audience. The only excuse he made or offered for the wish was, that other men had done the same thing. He did not modify or recant the wish therein expressed.

Q. Were you at precinct No. 1 on the day of the May election; and if you were, did you see any other person acting as clerk there besides Wm. Pottinger?—A. I saw Mr. Swoop writing down names in the poll-book.

J. H. CHISSOM.

Also, the deposition of Philip Watkins.

By S. E. Smith's attorney:

Question. Are you acquainted with the handwriting of Burr H. Triplett, of this city; if so, examine poll-book of precinct No. 2, in this county, of last May election, and say if a great number of names of voters thereon are not in his handwriting?—A. I am acquainted with the handwriting of Burr H. Triplett, and have examined poll-book of precinct No. 2, and find about fifty names in the handwriting of said Triplett.

PHIL. T. WATKINS.

Also, the deposition of Dr. Jno. F. Kimbley.

By S. E. Smith's attorney:

Question. State, if you can, how the judges, clerks, and sheriffs of the election at last May for congressman in this county voted, as between Brown, Ritter, and Smith.—Answer. I have examined the poll-book and find that thirty-two of the officers voted for Brown, two of them for Ritter, and two of them for Smith.

Q. How did the vote stand for each candidate for Congress in this county at that election?—A. One thousand five hundred and fifty-two votes were cast for Brown, 79 votes for Ritter, and 183 votes for Smith.



Q. From your acquaintance with the county, was there a sufficient number of the members of each political party resident in the several precincts to fill the offices of judges, clerks, and sheriffs therein?—A. There was.

J. F. KIMBLEY.

STATE OF KENTUCKY, *Daviess County*:

I, Jno. Thomas, examiner for Daviess County, do certify that the foregoing depositions of Thomas C. Jones, J. H. Chissom, Phil. T. Watkins, and J. F. Kimbley, were taken before me at the time and place, and in the contested election matter mentioned in the caption, the said Jones, Chissom, Watkins, and Kimbley having first been sworn by me that their evidence should be the truth, the whole truth, and nothing but the truth. The statements of T. C. Jones and P. T. Watkins were reduced to writing and subscribed by them in my presence, and the statements of J. H. Chissom and J. F. Kimbley were reduced to writing by me, and subscribed by them in my presence; the attorney for Samuel E. Smith alone being present at the examination.

Given under my hand this 28th day of June, 1867.

Attest:

JNO. THOMAS, *Examiner*.

The deposition of Thomas Bruce, taken on the 19th day of June, 1867, at the law office of Smith & Roark, in the town of Greenville, Muhlenburg County, Kentucky, to be read as evidence in the contested election case before the fortieth Congress of the United States wherein Samuel E. Smith is contestant, and John Young Brown is contestee.

Examined by contestant:

Question. State your age, occupation, and place of residence.—Answer. I am thirty-eight years of age; I am clerk of the Muhlenburg County court; reside in Greenville, Muhlenburg County, Kentucky..

Q. State whether or not you are, by virtue of your office, custodian of the poll-books of this county; and, if so, examine the poll-book from precinct No. 2 (or the Boggess precinct) of this county, and state what number of votes each candidate for Congress received at the last May election, and also the names of the officers of the election at said precinct at the election held on the 4th day of May last, and how each officer voted.—A. By virtue of my office I am custodian of the poll-books of this county, and find, upon examination of poll-book from district No. 2, that John Y. Brown received 156 votes, and B. C. Ritter received 13 votes, and S. E. Smith received 86 votes; George D. Park and W. E. Mobley, judges; N. J. Harris, clerk, and W. H. H. Farris, sheriff in said precinct. George D. Park voted for John Y. Brown; W. E. Mobley voted for B. C. Ritter; N. J. Harris voted for J. Y. Brown; and the aforesaid Farris did not vote.

THOMAS BRUCE.

The further taking of depositions is adjourned until the 20th day of June, 1867.

T. J. JONES, *Examiner*.

The further taking of depositions resumed pursuant to adjournment.

The deposition of E. G. Neel, taken on the 20th June, 1867, to be read as evidence in the contested-election case stated in the caption.

Question. State your age, occupation, and place of residence.—Answer. I am twenty-nine years of age; reside in Greenville, Kentucky; I am a saddler and a justice of the peace.

Q. Are you or not acquainted with G. D. Park, N. J. Harris, and W. E. Mobley; if so, how long have you known them?—A. I am, and have known them for about nine years.

Q. State if you know to what political party they belong.—A. They belong to the so-called democratic party, which I call the rebel democracy.

Q. Did you or not hear the contestee, John Y. Brown, speak during the late canvass for Congress; and if so, at what place?—A. I did; at Greenville, Kentucky.

Q. Did he or not, during the speech which you heard him make, acknowledge that he was the author of a certain letter? and if so, state if you can the exact contents of said letter, or give herewith, as part of your answer, an exact copy of the letter in question.—A. During the speech which I heard him make, he acknowledged that he was the author of the letter herewith filed, marked A, and made a part of my deposition.

Q. What did he say, if anything, about the contents of said letter?—A. When his attention was called to that letter he said: "I said no more then than I can defend today."

Q. Are you or not extensively acquainted with the people of this county?—A. I have a considerable acquaintance with the people of this county, and know almost every person (voters I mean) in four out of the six precincts in the county.



Q. Do you or not know of a single man who belongs to the Union party who voted for Brown in the late race for Congress?—A. I do not.

Q. Do you or not know of any rebels, or democrats as they call themselves, who voted for Smith?—A. I know of but one.

E. G. NEEL.

A.

[From the Louisville Courier, May 15, 1861.]

ELIZABETHTOWN, April 18, 1861.

*Editor Louisville Courier:*

My attention has been called to the following paragraph which appeared in your paper of this date:

"JOHN YOUNG BROWN'S POSITION.—This gentleman, in reply to some searching interrogatories put to him by Governor Helm, said in reference to the call of the President for four regiments of volunteers to march against the South—

"I would not send a solitary man to aid that government, and those who volunteer should be shot down in their tracks."

This ambiguous report of my remarks has, I find, been misunderstood by some who have read it, who construe my language to apply to the government of the Confederate States! What I did say was this:

"Not one man or one dollar will Kentucky furnish Lincoln to aid him in his unholy war against the South. If this northern army shall attempt to cross our borders, we will resist it unto death; and if one man shall be found in our commonwealth to volunteer to join them, he ought, and I believe will, be shot down before he leaves the State."

This was not said in reply to any question propounded by Ex-Governor Helm, as you have stated, and is no more than I frequently uttered publicly and privately prior to my debate with him,

Respectfully,

JOHN YOUNG BROWN.

STATE OF KENTUCKY, *Muhlenberg County, et:*

I, Thomas J. Jones, an examiner for Muhlenberg County, do certify that the foregoing depositions of Thomas Bruce and E. G. Neel were taken before me, and were read to and subscribed by them in my presence, and to be read as evidence in the contested-election case mentioned in the caption, the said Bruce and Neel having been duly sworn by me before they gave their testimony, and the statements of said Bruce reduced to writing by him in my presence, and the statements of the said Neel were reduced to writing by me in his presence; the contestant, Samuel E. Smith, in person, being alone present at the examination of said witnesses.

Given under my hand this 20th of June, 1867.

THOMAS J. JONES,

*Examiner for Muhlenberg County, Kentucky.*

Notice.

SAMUEL E. SMITH, contestant, }

vs.

JOHN YOUNG BROWN, contestee. }

The contestee, John Young Brown, is hereby notified that depositions on behalf of the contestant will be taken at the law office of Smith & Roark, in the town of Greenville, Muhlenberg County, Kentucky, on Wednesday, the 19th day of June, 1867; also at the office of the clerk of the circuit court, in the city of Hopkinsville, Christian County, Kentucky, on Friday, the 21st day of June, 1867; also at the office of the clerk of the circuit court, in the town of Madisonville, Hopkins County, Kentucky, on Monday, the 24th day of June, 1867; also at the office of the clerk of the circuit court, in the town of Calhoun, McLean County, Kentucky, on Wednesday, the 26th day of June, 1867; also at the office of circuit clerk, in the city of Owensboro, Daviess County, Kentucky, on Friday, the 28th day of June, 1867; also at the law office of Judge Harrison, in the town of Hartford, Ohio County, Kentucky, on Monday, July 1, 1867; also at the office of the clerk of the circuit court, in the town of Hawesville, Hancock County, Kentucky, on Wednesday, the 3d day of July, 1867; also at the office of the clerk of the circuit court, in the town of Hardinsburg, Breckinridge County, Kentucky, on Friday, the 5th day of July, 1867; also at the office of the clerk of the circuit court, in the town



of Litchfield, Grayson County, Kentucky, on Monday, the 8th day of July, 1867; also at the office of the clerk of the circuit court, in the town of Brownsville, Kentucky, on Wednesday, July the 10th, 1867; also at the office of the clerk of the circuit court, in the town of Morgantown, Butler County, Kentucky, on Friday, the 12th day of July, 1867; also at the office of the clerk of the circuit court, in the city of Henderson, Henderson County, Kentucky, on Wednesday, the 17th day of July, 1867; and the taking at each place will adjourn from day to day, so as not to interfere with the taking at other places, until completed, to be used as evidence in the contested election between the contestant and the contestee herein named before the Congress of the United States, this 12th day of June, 1867.

SAMUEL E. SMITH.

Executed by delivering to John Young Brown a true copy of the within, June 15, 1867.

THOMAS J. TINSLEY.

Sworn to before me by Thomas J. Tinsley, this June 18, 1867.

E. G. NEEL, *J. P., M. C.*

STATE OF KENTUCKY, *County of Muhlenberg, ss:*

On this 26th day of June, A. D. 1867, before me, a justice of the peace in and for the county and State above named, personally appeared M. J. Roark, who being by me duly sworn according to law, on his oath doth say that he is a resident of Greenville, County and State above named, and further that he was present at Morgantown, State of Kentucky, on the 10th day of April, 1867, and heard John Young Brown, in a public speech, declare and avow that he was the author of a letter charged to have been written by him, a copy of which letter is herewith filed, marked B, and made a part of this affidavit.

M. J. ROARK.

Sworn to and subscribed before me, by M. J. Roark, this 26th day of June, 1866.

E. G. NEEL, *J. P., M. C.*

STATE OF KENTUCKY, *County of Muhlenberg, ss:*

On this 26th day of June, A. D. 1867, before me, a justice of the peace in and for the county and State above named, personally appeared E. G. Neel, who, being by me duly sworn according to law, doth, on his oath, say that he is a resident of Greenville, State of Kentucky; and further that he was present at Greenville, State aforesaid, on the 8th day of April, 1867, and heard John Young Brown, then a candidate for Congress in this second congressional district, in a public speech, declare and avow that he was the author of and responsible for a letter charged to have been written by him in 1861, which letter is filed herewith as part of this affidavit, and marked B; he also stated in that same public speech he had said nothing in said letter that he was not prepared to defend on that day, *i. e.*, 8th day of April, 1867; he further admitted in same speech that for something said or done by him, Brown, he was, in the year 1865, arrested by order of Colonel Sam Johnson, of Seventeenth Kentucky volunteer cavalry, and confined in jail or prison.

E. G. NEEL.

Sworn to and subscribed before me, by E. G. Neel, this 26th day of June, 1867.

JOHN M. WILLIAMS, *J. P.*

B.

[From the Louisville Courier, May 15, 1861.]

ELIZABETHTOWN, April 18, 1861.

*Editor Louisville Courier:*

My attention has been called to the following paragraph, which appeared in your paper of this date:

"JOHN YOUNG BROWN'S POSITION.—This gentleman, in reply to some searching interrogatories put to him by Governor Helm, said in reference to the call of the President for four regiments of volunteers to march against the South, 'I would not send one solitary man to aid that government, and those who volunteer should be shot down in their tracks.'"

This ambiguous report of my remarks has, I find, been misunderstood by some who have read it, who construe my language to apply to the government of the Confederate States. What I did say was this:

"Not one man or one dollar will Kentucky furnish Lincoln to aid him in his unholy war against the South. If this northern army shall attempt to cross our borders, we will resist it unto the death; and if one man shall be found in our commonwealth to



volunteer to join them, he ought, and I believe will, be shot down before he leaves the State."

This was not said in reply to any question propounded by ex-Governor Helm, as you have stated, and is no more than I frequently uttered publicly and privately prior to my debate with him.

Respectfully,

JOHN YOUNG BROWN.

*Abstract from the poll-books of Henderson County, of an election held the 4th day of May, 1867, for representative in Congress for the second district in Kentucky.*

#### HENDERSON PRECINCT.

Aggregate vote for J. Y. Brown, 401; aggregate vote for B. C. Ritter, 2; aggregate vote for S. E. Smith, 34.

Officers of election at said precinct:

*Judges.*—W. S. Holloway voted for no candidate; R. B. Cabell voted for J. Y. Brown.

*Sheriff.*—George E. Funk voted for J. Y. Brown.

*Clerk.*—T. F. Cheaney voted for no candidate.

#### CORYDON PRECINCT.

Aggregate vote for J. Y. Brown, 86; aggregate vote for B. C. Ritter, —; aggregate vote for S. E. Smith, —.

Officers of election at said precinct:

*Judges.*—William B. Trigg voted for no candidate; John N. Dorsey voted for J. Y. Brown.

*Sheriff.*—I. W. Handley voted for J. Y. Brown.

*Clerk.*—Frederick H. Overton voted for J. Y. Brown.

#### WALNUT BOTTOM PRECINCT.

Aggregate vote for J. Y. Brown, 64; aggregate vote for B. C. Ritter, —; aggregate vote for S. E. Smith, —.

Officers of election at said precinct:

*Judges.*—G. P. Lilly voted for J. Y. Brown; John T. Moore voted for J. Y. Brown.

*Sheriff.*—John Higgins voted for J. Y. Brown.

*Clerk.*—G. W. Smith voted for J. Y. Brown.

#### TILLOTSON PRECINCT.

Aggregate vote for J. Y. Brown, 132; aggregate vote for B. C. Ritter, —; aggregate vote for S. E. Smith, —.

Officers of election at said precinct:

*Judges.*—C. C. Eades voted for no candidate; J. R. Biggs voted for J. Y. Brown.

*Sheriff.*—B. F. Williams voted for J. Y. Brown.

*Clerk.*—J. M. Willingham voted for J. Y. Brown.

#### SPOTTSVILLE PRECINCT.

Aggregate vote for J. Y. Brown, 36; aggregate vote for B. C. Ritter, 5; aggregate vote for S. E. Smith, 14.

Officers of election at said precinct:

*Judges.*—William E. Bennett voted for B. C. Ritter; R. S. Eastin voted for J. Y. Brown.

*Sheriff.*—W. B. Hopkins voted for no candidate.

*Clerk.*—Samuel W. Langley voted for Samuel E. Smith.

#### CAIRO PRECINCT.

Aggregate vote for J. Y. Brown, 195; aggregate vote for B. C. Ritter, 9; aggregate vote for Samuel E. Smith, 1.

Officers of election at said precinct:

*Judges.*—J. A. Quinn voted for J. Y. Brown; L. S. Melton voted for J. Y. Brown.

*Sheriff.*—A. Royster voted for J. Y. Brown.

*Clerk.*—G. W. Quinn voted for J. Y. Brown.

#### HEBARDSVILLE PRECINCT.

Aggregate vote for J. Y. Brown, 164; aggregate vote for B. C. Ritter, —; aggregate vote for S. E. Smith, 12.



Officers of election at said precinct :

*Judges.*—S. D. Haynes voted for J. Y. Brown; A. S. Cheaney voted for J. Y. Brown.

*Sheriff.*—I. Johnson voted for J. Y. Brown.

*Clerk.*—M. J. Heist voted for no candidate.

STATE OF KENTUCKY, *Henderson County, ss:*

I, James P. Breckinridge, clerk of the county court for the county aforesaid, do certify that the foregoing is a true and perfect abstract of the poll-books in my office of an election held on the 4th day of May, 1867, for the election of congressman.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, this the 29th of June, 1867.

[SEAL.]

J. P. BRECKINRIDGE, *C. H. C. C.*

SAMUEL E. SMITH, contestant,  
vs.  
JOHN YOUNG BROWN, contestee. } Notice.—Extract.

The contestee, John Young Brown, is hereby notified that depositions on behalf of the contestant will be taken at the office of the clerk of the circuit court in the city of Hopkinsville, Christian County, Kentucky, on Friday, the 21st day of June, 1867, and continue from day to day until completed, to be read as evidence in the contested election between the contestant and contestee herein named, before the Congress of the United States.

SAMUEL E. SMITH.

JUNE 12, 1867.

True copy of extract.

The deposition of Joseph I. Landes, taken at the clerk's office of the Christian circuit court in Hopkinsville, Kentucky, on Friday, the 21st day of June, 1867, to be read on behalf of contestant, S. E. Smith, in the contested election case between Samuel E. Smith and John Young Brown, to be tried and determined by the House of Representatives of the United States of the fortieth Congress.

By Samuel E. Smith's attorney:

Question. Please state your age, occupation, and place of residence.—Answer. My age is thirty-one years; occupation, a lawyer; and reside in Hopkinsville, Christian County, Kentucky.

Q. Did you or not have a discussion between the Hon. John Young Brown and Hon. B. C. Ritter, candidates for Congress, some time in April, 1867, at Hopkinsville, Kentucky?—A. I did.

Q. Will you please examine the printed copy of the letter now shown you, dated "Elizabethtown, April 18, 1861," over the name "John Young Brown," make said printed copy a part of your deposition, and state whether or not the Hon. John Young Brown, in the discussion aforesaid, publicly avowed himself the author of said production?—A. I have examined the printed copy of the letter referred to in the question above, and hereto attach it and make it a part of this answer. At the time referred to the Hon. B. C. Ritter read the letter aforesaid, and asked Mr. Brown whether or not he was its author, and Mr. Brown replied that he was its author, but stated that at the time he wrote it he was considered a "Union man," and was acting with others who were considered the leaders of the Union strength in the State.

"A 'DEMOCRATIC PLATFORM.'—AN INTERESTING REMINISCENCE OF HON. JOHN YOUNG BROWN.

"HENDERSON, KY., *February 17, 1867.*

"*Editors Franklin Commonwealth:*

"Hon. John Young Brown was given the democratic congressional nomination in this district upon the score of his political record since 1860, and his fidelity to 'true democratic principles.' I doubt not that Mr. Brown will be elected to Congress; and if elected, it is more than probable that the Committee of Elections in the House at Washington will be called upon to examine into the 'merits' of his record before admitting him to the seat now occupied by poor Mr. Ritter. Mr. Brown made a number of speeches in the trying days of 1861, and wrote one letter that I know of, and for the sake of making clear the noble 'democratic record,' upon the merits of which this accomplished gentleman aspires to a seat in the federal Congress, I forward that letter to you. It is as follows, taken from the Louisville Courier, of date May 15, 1861.



The letter, allow me to suggest, should be incorporated into the platform of the 'democratic convention' which will assemble in your city on the 22d instant:

[From the Louisville Courier, May 15, 1867.]

'ELIZABETHTOWN, April 18, 1861.

'Editors Louisville Courier:

'My attention has been called to the following paragraph which appeared in your paper of this date:

"JOHN YOUNG BROWN'S POSITION.—This gentleman, in reply to some searching interrogatories put to him by Governor Helm, said, in reference to the call of the President for four regiments of volunteers to march against the South—

"*I would not send one solitary man to aid that government, and those who volunteer should be shot down in their tracks.*"

'This ambiguous report of my remarks has, I find, been misunderstood by some who have read it, who construe my language to apply to the *government of the Confederate States!* What I did say was this:

"Not one man or one dollar will Kentucky furnish *Lincoln* to aid him in his *unholy war against the South*. If this northern army shall attempt to cross our borders, *we will resist it unto the death*, and if one man shall be found in our Commonwealth to volunteer to join them, *he ought to, and I believe will, be shot down before he leaves the State.*"

'This was not said in reply to any question propounded by ex-Governor Helm, as you have stated, and is no more than *I frequently uttered publicly and privately* prior to my debate with him.

'Respectfully,

'JOHN YOUNG BROWN.'

"In view of the foregoing, can Mr. Brown take the test oath before assuming a seat in the federal Congress?

"RECORD."

By Samuel E. Smith's attorney:

Question. State if you were a Union man then, and at all times, during the late war, and also whether the party to which you belonged ever advocated the propriety of shooting down every man who joined the federal army.—Answer. I was a Union man at the date of that letter, and at all times during the late war. I never did, nor did the Union party of Kentucky to which I belong, advocate the propriety of shooting down anybody in the war except those who were engaged in the rebellion against the government of the United States.

Q. Please state how the announcement by Mr. Brown in the discussion aforesaid, of his authorship of said letter, was received by his political friends in hearing, and what (from your knowledge of those you observed) was the political standing of those friends during the late war?—A. At the time above stated, Mr. Brown's avowal of his authorship of the letter aforesaid was received by a portion of the audience with vociferous applause. My impression and best recollection are that most of those who on that occasion so loudly manifested their approval of the sentiments expressed in that letter were rebels during the war; or, if not actually engaged in the rebellion, were its most earnest advocates and sympathizers.

Q. Did you ever hear Mr. Brown disavow the *sentiment* of that letter or manifest any regret at having written it, or express any "change of heart" on the subject?—A. I never did. But I remark here that I have no personal acquaintance with Mr. Brown, and never heard him in a public speech before or since the time referred to above.

J. I. LANDES.

Also the deposition of Walter Evans, taken for the same purpose and at the same time and place.

By Samuel E. Smith's attorney:

Question. What is your age, occupation, and place of residence?—Answer. I reside in Hopkinsville, Kentucky; am twenty-five years old, and a practicing lawyer by profession.

Q. Have you examined the poll-books of this (Christian) county for the May election, 1867? If yea, please state whether or not at several of the precincts for voting in said county at said election there were any of the officers of election of that political party which favored the election of Samuel E. Smith to Congress; if so, how many of such precincts and what was the aggregate majority given by them to Hon. John Young Brown?—A. I have examined the poll-books mentioned, and find that there were eight out of the eleven voting precincts of the county at which, in that election, there were no officers who were of Smith's political party. In those eight precincts Brown's majority over Smith was about 700 votes; in three precincts the distribution of offi-



cers of election was equal, and in them Smith's majority was about 300 votes over Brown. In five of the eight precincts above referred to, the party favoring the election of the Hon. B. C. Ritter was represented by an officer in each. In three or four of the eight precincts there were, perhaps, no men who favored the election of Smith, nor do I think the fact of the officers being as they were affected the vote in any way.

Q. State if you have examined the printed copy of the letter referred to by Mr. Landes in his foregoing deposition. If yea, can you state what Hon. John Young Brown said in regard to his being the author of it?—A. I have examined the said printed copy of said letter, and refer to it as attached by Mr. Landes, and marked with his signature, as a part of my deposition. In a discussion which I heard in this place, early in April of this year, between Mr. Brown and his then only opponent Mr. Ritter, Mr. Brown, in answer to Mr. Ritter's inquiry avowed its authorship, amid the wildest cheers of his admiring friends in the audience. No one of those friends that I observed had for a long time been accused of any sympathy for the government in its arduous trial of war, and many of them I knew to be late rebel soldiers; all were rebel in sentiment, so far as I knew, and I scanned the crowd as closely as was necessary to ascertain this.

Hon. John Young Brown was known and recognized during the whole canvass as having been a rebel sympathizer; that gave him applause here and was the basis of his strength, but of those who voted for him in this county, I doubt if there were ten men who could truthfully claim to be Union men.

I never heard him express a regret for having written the letter, and, from the manner in which it was treated, I entertain no doubt that he regarded it as perhaps his most efficient campaign document; it certainly did him no injury here with his friends. And further deponent saith not.

WALTER EVANS.

STATE OF KENTUCKY, *Christian County*:

I, Albert H. Clark, examiner for said county, certify that the foregoing depositions of Joseph I. Landes and Walter Evans were taken before me and read to and subscribed by them in my presence, at the time and place and in the cause mentioned in the caption, they being first sworn by me that the evidence they should give in the cause should be the truth, the whole truth, and nothing but the truth; and their said evidence was reduced to writing by them, severally in my presence, the contestant, Samuel E. Smith, by his attorney, alone being present at the examination.

Given under my hand this June 21, 1867.

ALBERT H. CLARK,  
*Examiner for Christian County, Ky.*

The deposition of Thomas Phillips, taken at the office of the clerk of the Ohio circuit court, in the town of Hartford, Ohio County, Kentucky, on the 1st of July, 1867, to be read as evidence in an action between J. E. Smith, plaintiff, and John Y. Brown, defendant, now pending before the Congress of the United States.

THOMAS PHILLIPS, after being duly sworn, deposed as follows:

By Contestant SMITH:

Question. Please state your age, and where you live.—Answer. I live in Ohio in district No. 5, the Fordsville district, and I am fifty-one years old.

Q. Were you present at the last May election at the Fordsville precinct? If so, state the number of votes polled for each candidate for Congress, the politics of the judges, and how they voted.—A. I was; and B. C. Ritter received 6 votes, John Y. Brown received 110 votes, and S. E. Smith received 51 votes, and three were rebels calling themselves democrats, and one Union man. The rebels were Henry Smith, sheriff, and J. C. Sutton, clerk, and C. W. L. Cobb, judge; and I was a judge myself, and I am a Union man.

Q. Is John Young Brown loyal or disloyal?—A. I do not consider him loyal, but I do consider him disloyal.

Q. Was he or not the rebel candidate for Congress?—A. He was, and he was called the rebel candidate by the party themselves, and they boasted of him as the rebel candidate.

Q. Who represented the Union party, and who represented the conservative party?—A. S. E. Smith was the Union candidate, and B. C. Ritter was the conservative candidate.

Q. State whether or not Smith's name was on the poll-book at Fordsville precinct when the election commenced?—A. It was not, and I had it put there myself.

And further deponent saith not.

THOMAS PHILLIPS.

Also the deposition of Mark Wedding, taken at the same time and place, and for the same purposes mentioned in the caption.



MARK WEDDING, after being duly sworn, deposed as follows:

By S. E. SMITH:

Question. State your age and where you live, and if you were present at the last May election at the Fordsville precinct.—Answer. I am forty-six years old, and I live in two and a half miles of Fordsville, district No. 5, and in Ohio County, and I was present at the May election in May last at Fordsville, Ohio County.

Q. State who were the candidates for Congress and their politics, as near as you can, and who were the judges of the election, and how they voted for Congress, and give their politics.—A. S. E. Smith, John Y. Brown, and B. C. Ritter were the candidates for Congress. S. E. Smith was the Union candidate, and John Y. Brown was the rebel democrat, and B. C. Ritter was the conservative democratic candidate, and C. W. R. Cobb was judge, and J. C. Sutton was clerk, and Henry Smith was sheriff, and they all three belonged to the rebel democratic party; they voted for J. Y. Brown, and Thos. Phillips was one of the judges, and he was a Union man, and he voted for S. E. Smith.

Q. Is or not J. Y. Brown generally considered disloyal?—A. He was the rebel democratic candidate, and they boasted of him as the rebel candidate, and he was generally considered disloyal, and he was charged with writing a letter saying that every man that went into the army from Kentucky for the purpose of putting down the rebellion ought to be shot, and he did not deny the charge.

Further deponent saith not.

MARK WEDDING.

Also the deposition of Wm. M. Miller, taken at the same time and place and for the same purposes mentioned in the caption.

WM. M. MILLER, after being duly sworn, deposed as follows:

By S. E. SMITH:

Question. What is your age, and where do you live? Were you present at the Caney precinct at the last May election? Who were the candidates for Congress, and what were their politics? Who were the officers of election, and what were their politics, and how did they vote for Congress?—Answer. I am sixty years old, and I live in the Caney district, No. 1, Ohio County, Kentucky, and I was present at the Caney precinct at the last May election, and B. C. Ritter, John Y. Brown, and S. E. Smith were the candidates for Congress, and John Y. Brown was the rebel democratic candidate, B. C. Ritter was the conservative candidate, and S. E. Smith was called the Union candidate, and T. J. Rorbey was sheriff, Wm. Cannon was one of the judges, and Geo. M. Thomas was clerk, and they all voted for J. Y. Brown, and C. G. Crowder was one of the judges, and he was a Union man, but did not vote for Congress.

Q. State the number of votes each received in district No. 1 at the last May election.—A. B. C. Ritter received 10 votes, John Y. Brown 47 votes, and S. E. Smith 86 votes.

And further deponent saith not.

WM. M. MILLER.

R. S. MOSELY, after being duly sworn, deposed as follows:

By S. E. SMITH:

Question. Please state your age, where you live, and what is your occupation.—Answer. I am thirty-three years old and past, live in Hartford, Ohio County, Kentucky, and my occupation is that of county clerk court of Ohio County, Kentucky.

Q. Have you charge of the poll-books for Ohio County for the last May election? if so, state who were the candidates for Congress, and the number of votes each of them got at each precinct; also state the officers of each precinct, and how they voted for Congress.—A. I have the charge and keeping of the poll-books for this (Ohio) county for the last May election. John Y. Brown, B. C. Ritter, and Sam. E. Smith were the candidates, as appears from the poll-books aforesaid, voted for for Congress. At the Caney precinct the vote stood as follows: For B. C. Ritter, 10; for John Y. Brown, 47; for Sam. Smith, 86. At Cool Spring the vote stood as follows: Ritter, 9; Brown, 40; Smith, 33. At Centreville, as follows: Ritter, 46; Brown, 71; Smith, 27. At Bell's store, Ritter, 10; Brown, 131; Smith, nothing. At Fordsville, Ritter, 6; Brown, 110; Smith, 50. At Ellis's school-house, Ritter, 5; Brown, 81; Smith, nothing. At Hartford, Ritter, 23; Brown, 82; Smith, 28. At Hartford again, (being two districts in Hartford,) Ritter, 16; Brown, 109; Smith, 51. At Cromwell the vote stood as follows: Ritter, 10; Brown, 98; Smith, 117. The officers at Caney precinct were G. M. Thomas, Wm. Cannon, and C. G. Crowder; two of them voted for Brown, and the third did not vote. The officers at Cool Spring were W. C. Taylor, J. B. Bulkerson, Robert Sherrod, and W. D. Coleman, three of whom voted for Brown, and the fourth did not vote. The officers at Centreville were B. C. Warden, William Ashby, and George R. Ashby; and two of them voted for Ritter, and one for Brown. The officers at Bell's store were A. B. Gray, William H. Pate, Ben. Field, and W. P. Turner, three of them voting for



Brown, and the other did not vote. The officers at Fordsville were C. W. R. Cobb, J. C. Sutton, Thomas Phillips, and H. Smith, three of whom voted for Brown, and the fourth did not vote. The officers at Ellis's school-house were B. F. Chamberlin, Thomas H. Loyd, Henry Whitely, and John P. Burke, all four of whom voted for Brown.

The officers at Hartford district, No. 7, were Mr. P. Barrett, J. S. Reuder, F. G. Nall, and R. E. Barnett, two of whom voted for Brown, and two for Ritter. The officers at the Hartford precinct, No. 9, were Henry Thompson, Phocion Morgan, A. P. Hudson, and H. Baltzell, three of whom voted for Brown, and one for Smith. The officers at Cromwell were John E. Ragsdale, W. B. Reuder, and W. L. S. Brackin, two of whom voted for Brown, and one for Smith.

Q. Was Smith's name upon all the poll-books?—A. Samuel Smith's name appears on all the poll-books except at Bell's store and Ellis's school-house. It appears that there was a column left for his name, but his name does not appear in said column at these two precincts.

And further this deponent saith not.

R. S. MOSELY,  
*Clerk Ohio County Court.*

Also the deposition of B. E. Richardson, taken at the same time and place, and for the same purposes mentioned in the caption.

B. E. RICHARDSON, after being duly sworn, deposed as follows:

By S. E. SMITH:

Question. What is your age, and where do you live? Were you present at the last May election held at Bell's store precinct? Who were the candidates for Congress, and their politics? Who were the officers of election at that precinct, and their politics, and state how they voted?—Answer. I am forty-two years old, live in Ohio County, Kentucky, and I was at the May election. B. C. Ritter was the conservative democrat, John Y. Brown was the rebel democrat, S. E. Smith was the Union candidate, W. H. Pate and A. B. Gray judges; Pate, rebel; Turner, clerk, rebel; Benjamin Fields, sheriff, democrat. They all voted for Brown but Gray, and Smith's name was not on the poll-book, and he did not vote.

B. E. RICHARDSON.

Also the deposition of Wm. C. King, taken at the same time and place, and for the same purposes mentioned in the caption.

WM. C. KING, after being duly sworn, deposed as follows:

By S. E. SMITH:

Question. What is your age, and where do you live? Were you present in Hartford at the last May election? Who were the candidates for Congress, and their politics? Who were the officers of election at the two districts in Hartford, their politics, and how did they vote for Congress?—Answer. I am forty years old, and I live in district No. 9, Ohio County, Kentucky, and I was present at the last May election, and S. E. Smith, John Y. Brown, and B. C. Ritter were the candidates for Congress, and S. E. Smith was the Union candidate, and John Y. Brown was the rebel candidate, and B. C. Ritter was the conservative candidate, and Henry Thompson was one of the judges, and Phocion Morgan was the other judge in district No. 9. A. P. Hudson was sheriff, and Henry Baltzell was clerk. The judges and clerk are all rebels, and voted for John Y. Brown; and A. P. Hudson is a Union man, and he voted for S. E. Smith. J. L. Render was one of the judges in district No. 7, and F. G. Nall was the other judge; John P. Barrett sheriff, and R. E. Barnett clerk. J. L. Render and J. P. Barrett are rebels and voted for Brown; and F. G. Nall and R. E. Barnett are conservative democrats, and they voted for B. C. Ritter.

Further deponent saith not.

WILLIAM C. KING.

Also the deposition of Ben. Duvall, taken at the same time and place, and for the same purposes mentioned in the caption.

BEN. DUVALL, after being sworn, deposed as follows:

By S. E. SMITH:

Question. What is your age? Where do you live? Were you present at the last May election at the Cromwell precinct? Who were the candidates for Congress, and their politics? Who were the officers of election? What were their politics, and how did they vote?—Answer. My age is thirty-nine years. I live in Cromwell precinct. I was at the last May election. The candidates were B. C. Ritter, conservative, J. Y.



Brown, the rebel, and S. E. Smith, the Union candidate. John E. Ragsdale, one of the judges, a Union man, W. B. Render, rebel. Sheriff of election, George W. Taylor, rebel; clerk, W. S. S. Brackin, rebel. The last three voted for J. Y. Brown.

Q. Did you hear the candidates for Congress speak? Say all you know about a letter written by J. Y. Brown to the Louisville Courier, the purport of said letter, and if Brown acknowledged he wrote it.—A. I heard J. Y. Brown speak in the Union Church at Hartford, about one week before the election. I heard the Union candidate, Smith, read a letter that Brown had written to the Louisville Courier about the beginning of the war, in which letter J. Y. Brown said that if one man could be found in this commonwealth who would join Lincoln in his unholy war against the South, he ought, and I believe will be, shot down before he leaves the State; but said that he had reference to some questions propounded to him by ex-Governor Helm, concerning Kentucky neutrality. Brown did not deny any part of that letter, as I heard.

Deponent further saith not.

BEN. DUVALL.

STATE OF KENTUCKY, *Ohio County* :

I, J. H. Leach, examiner for Ohio County, do hereby certify that the foregoing depositions of Thomas Phillips, Mark Wedding, Wm. M. Miller, R. S. Mosely, B. E. Richardson, Wm. C. King, and Ben. Duvall, were taken before me, and were read to and subscribed by them in my presence at the time and place and in the action mentioned in the caption; the said Phillips, Wedding, Miller, Mosely, Richardson, King, and Duvall having first been sworn by me that the evidence they should give in the action should be the truth, the whole truth, and nothing but the truth; and the statements of Thos. Phillips, Mark Wedding, Wm. Miller, and Wm. C. King reduced to writing by me in their presence, and the statements of R. S. Mosely, B. E. Richardson, and Ben. Duvall were written by themselves in my presence, the attorney for the plaintiff being alone at the examination.

Given under my hand this 1st July, 1867.

J. H. LEACH,  
*Examiner for Ohio County.*

S. E. SMITH: On Saturday, the 15th day of June, 1867, there was handed to me, by a person calling himself Tinsley, a document, of which the following is a copy :

“GREENVILLE, KENTUCKY, *June 12, 1867.*

“SIR: You are hereby notified that I will contest your right to a seat in the fortieth Congress of the United States as representative from the second congressional district of the State of Kentucky, and claim the seat for myself, upon the following grounds, viz: First. In each and every district in the several counties composing the second congressional district, wherein you are returned as having received a greater number of votes than myself, the election was null and void, in this, that the election was not held in conformity to the law of this State which provides ‘that the officers of all elections by the people of the State shall be composed of an equal number from each of the two political parties in the State,’ the provisions of which law were violated in this, that in each and every one of said districts there were a majority of the officers of said election who belonged to and acted with the political party which favored your election, and were opposed to and acted against that political party which favored the election of myself. Second. That in each and every district in the twelve counties composing this second congressional district, wherein the officers of the elections were appointed and the elections held and conducted in conformity to the laws of this State, I received a greater number of votes than yourself, and am so returned by the proper officers. Third. In all the counties composing this second congressional district, the political party which favored your election and opposed mine, did, a few days previous to the day of election, by and through its newspaper organs, and otherwise, publish and circulate the report that I had declined the canvass, thereby causing many persons, legal voters, who would have voted for me, and against you, to take no part in the election; also, causing no polls to be opened for me in several of the districts in the counties of Ohio, Breckinridge, and other counties. Fourth. That at the voting precinct at Calhoun, McLean County, and at other voting precincts in this second congressional district, those persons who favored your election, and opposed mine, did, by taunts, jeers, and threats of ostracism, in some manner, deter and prevent legal voters, who would have voted for me, and against you, from casting their votes. Fifth. That your known and avowed hostility and disloyalty to the government of the United States, and your sympathy and encouragement to the rebellion against the Constitution and laws of the United States, disqualify you under the laws of the United States from taking your seat as a representative in the Congress of the United States.

“Hon. JOHN YOUNG BROWN.”



The paper handed to me was not signed, but supposing it to have emanated from you, I make to the specifications thereof the following answer: To the first specification: I deny that in any one, or that in each and every district in the several counties composing the second congressional district of Kentucky, wherein I am returned as having received a greater number of votes than yourself for representative in the fortieth Congress of the United States, said election was not conducted in conformity with the laws of Kentucky, and deny that said election was null and void. I assert, in this connection, that the election was fairly contested; that no fraud was anywhere practiced.

The law of the State concerning the appointment of officers of the elections reads as follows: "So long as there are two distinct political parties in this commonwealth, the sheriff, judges, and clerk of elections, in all cases of elections by the people, under the Constitution and laws of the United States, and under the constitution and laws of Kentucky, shall be so selected and appointed as that one of the judges at each place of voting shall be of one political party, and one of the other or opposing political party, and that like difference shall exist, at each place of voting, between the sheriff and clerk of elections; provided, there be a sufficient number of members of each political party resident in the several precincts, as aforesaid, to fill said offices; and this requirement shall be observed by all officers of this commonwealth who have the power to appoint any of the aforesaid officers of elections, under the penalty of a fine of one hundred dollars for each omission, to be recovered by presentment of the grand jury." I deny that this law was not observed. There were three distinct political parties in Kentucky, and the judges of this election were selected with reference to their past political positions, it not being foreknown how they would vote in the contest in which you and I were competitors, and in most, if not all of said counties, said judges were appointed before it was known that you were a candidate. I assert that this law is merely directory, and that its non-observance does not operate to nullify any election held in this State, but merely subjects to a penalty the officer failing to observe its provisions.

To the second specification of your notice, I answer: That I deny that in each and every district in the twelve counties composing the second congressional district of Kentucky, wherein the officers of the elections were appointed and the elections held and conducted in conformity with the laws of this State, you received a greater number of votes than I did, or are so returned by the proper officers.

To your third specification I answer: I deny that in all the counties composing the second congressional district of Kentucky, the political party which favored my election, and opposed the election of yourself, did, a few days previous to the election, by and through its newspaper organs and otherwise, published and circulate the report that you had declined the canvass, thereby causing many persons, legal voters, who would have voted for you, and against me, to take no part in the election. And I deny that from this or any other cause no poll was opened for you in several of the districts in the counties of Ohio, Breckinridge, and other counties. One paper, the Hopkinsville Conservative, did publish that you had withdrawn from the race, but this was done without my knowledge, connivance, or consent. By what authority the editors of that paper made the announcement, I am unadvised, but am informed that the report was corrected by you in a speech delivered at Hopkinsville, Kentucky, in a very short time after its publication.

To the fourth specification of your notice I answer: I deny that at the voting precinct in Calhoun, McLean County, or at any of the voting precincts of the second congressional district of Kentucky, any persons who favored my election, and opposed yours, did, by taunts, jeers, and threats of ostracism, in some manner, or by any other means, deter and prevent a single legal voter from casting his vote for you, and against myself.

To the fifth specification of your notice I answer: That I deny that I have been, or am, disloyal or hostile to the government of the United States. I deny that I have ever given aid, counsel, countenance, or encouragement to the late rebellion against the Constitution and laws of the United States. I deny that I am disqualified, under the laws and Constitution of the United States, for taking a seat in the fortieth Congress of the United States, to which I have been duly elected by the qualified voters of the second congressional district of Kentucky.

JOHN YOUNG BROWN.

I acknowledge the service of the within notice and response this 8th day of July, 1867.

SAMUEL E. SMITH.

*To the honorable the Speaker of the House of Representatives of the United States of America in Congress assembled:*

The undersigned would respectfully represent that on the 4th day of May, 1867, he was duly elected as the representative of the fourth congressional district of Kentucky,



in the fortieth Congress of the United States of America, in accordance with the Constitution and laws of the United States and the Commonwealth of Kentucky, a certificate whereof was awarded to him on the 28th day of May, 1867, by his excellency Thomas E. Bramlette, governor, Hon. John M. Harlan, attorney general, and W. T. Samuels, esq., auditor of public accounts, of said Commonwealth, who constituted the board authorized by law to examine the returns of said election, and grant said certificate. Provided with these credentials, the undersigned repaired to the city of Washington with a view of entering upon the discharge of his duties as such representative during the present adjourned session of Congress which convened on the 3d of the present month, but was surprised to find on his arrival that a question as to his right to take a seat as such had already been raised and referred to the Committee of Elections, in his absence, although neither of his opponents, over whom he received a majority of nearly 6,000 votes, and not one of his own constituents, had interposed a solitary objection to his qualification, but simply upon the suggestion of a gentleman from another State—a suggestion which, the undersigned is contented at present to say, he feels assured the House will find, upon a knowledge of the facts, to have resulted from mistake, and that he has been guilty of no act inconsistent with his fealty to the Constitution and laws of his country, or the duty of a law-abiding citizen.

Although not admitting the regularity or right of this proceeding, the undersigned was satisfied to abide in patience the action of the committee and the wisdom of the House, and were he alone interested he might even now feel constrained to remain silent. Having, however, learned that on Monday, the 8th of the present month, the question as to his right to a seat was again referred to the Committee of Elections, and his district denied a representation until their report shall have been made and acted upon, notwithstanding the undersigned claims to possess all the qualifications prescribed by the Constitution for a representative in Congress, and knows of no reason under any law of the United States why he should not be immediately sworn in; and lest his further silence might be construed as a committal of either himself or his people to an acquiescence therein, he begs leave, with all proper deference to the opinions of those who may differ with him, to enter, in behalf of his constituents and himself, a respectful but firm and solemn protest against the action of the House in the premises, as irregular, unauthorized, and in derogation of the constitutional rights of those whom he claims the right to represent, as well as of the people of the entire Union.

Very respectfully,

J. PROCTOR KNOTT,

*Member of Congress elect from Fourth Congressional District, Kentucky.*

*To the honorable the members of the House of Representatives of the fortieth Congress of the United States:*

The undersigned respectfully represents that he is in receipt of a letter from Colonel W. S. Rankins, late candidate for a seat in your body from the sixth congressional district of Kentucky, (letter herewith filed,) in which said Rankins informs him that Thomas L. Jones, returned elected, is alleged to be not worthy a seat as member because of his disloyalty during the late rebellion; that a protest setting forth his disloyalty will be forwarded at once, asking that said Jones be not sworn in, and alleging a belief that they, the Union men of the district, will be able to prove said Colonel Thomas L. Jones to have been so disloyal that he is not entitled to a seat as a member of Congress of the United States. The undersigned presents this paper at the request of Colonel W. S. Rankins, whose letter is enclosed, and also states that a few days since he had another letter from Colonel Rankins stating that he, Rankins, could not be present in Washington because of his feeble state of health. He asks that this case, in which there are charges against Colonel Thomas L. Jones, be treated as other Kentucky cases, and the Union men of the sixth district of Kentucky given an opportunity of proving their allegations.

Respectfully,

SAMUEL MCKEE.

COVINGTON, June 29, 1867.

DEAR SIR: Since writing to you on the 25th, I have again been in consultation with a number of our friends in relation to contesting the election of Colonel T. L. Jones to Congress, and it is decided to make the fight. The chairman of the Union executive committee for this congressional district will send to you or Mr. Shellabarger at once a protest against Jones being permitted to take his seat, with a request that it be presented and referred to the proper committee at the right time. We believe we can make such proof of his disloyalty and of the illegality of the election as will vacate the seat claimed by him. And this, I have no doubt, is true of at least eight of the nine



members returned from Kentucky. I shall be obliged to you if you will give the matter as to our district your personal attention, as well the entire Union party of the district for whom I write and speak. I call upon you the more readily because you have kindly tendered me the benefit of your views and suggestions in relation to the subject, and because it is a common cause in which every loyal man is interested. I shall be pleased to hear from you upon the subject whenever you can conveniently spare the time to write. This I regard as the first step toward redeeming Kentucky from rebel rule, and having taken it, I for one am for *no step backward*, but am for pressing forward to the completion of the work. As matters now stand, the rebellion is an entire and complete success in Kentucky. The Union party of the nation has the power, and it is its duty, to reverse this state of things, and it will be false to itself, false to justice and right, false to the cause of freedom and of popular government, and false to the brave men who periled, and many of whom lost, their lives in vindication of right, if they fail to do it. Why shall the civil rights be conferred in the States declared to have been in rebellion, but disregarded and trampled under foot in Kentucky? No valid reason can be given for this unjust discrimination. Let us co-operate in an organized, persistent, and determined effort to get Kentucky right and keep her right. If necessary let the loyal men of that State memorialize Congress to enforce the national laws and jurisdiction—to be plain, to *reconstruct* the State. The time has come, and we must act and meet the issue squarely.

Yours truly,

Hon. SAMUEL MCKEE.

W. S. RANKIN.

LEXINGTON, KENTUCKY, June 29, 1867.

SIR: I feel it my duty, as chairman of the Union central committee of the seventh district of Kentucky, to inform the House over which you preside that J. B. Beck, congressman-elect from this district, has been, and is, a consistent rebel from the beginning of our troubles in 1861 till now; was the law partner of John C. Breckinridge; opposed the right of giving men and money to raise troops; attended the inauguration of the rebel governor, Hawes, at Frankfort; assisted secretly in raising rebel troops; left Lexington with the rebel forces when they retreated, and went as far as Richmond, Kentucky; and is an open repudiator of the national debt; all of which I expect to furnish you the information.

G. M. ADAMS,

*Chairman Union Central Committee Seventh District of Kentucky.*

Hon. S. COLFAX,

*Speaker of the House of Representatives, Washington City.*

LEXINGTON, KENTUCKY, July 1, 1867.

SIR: 1. Mr. Beck was a member in the summer of 1861 of the noted rebel meeting in Scott County, Kentucky, at which the invasion of the State by rebel forces was agreed upon. 2. He attended the inauguration of Hawes, by Bragg, as governor of Kentucky. 3. He announced on the streets of Lexington, during the occupancy of the State by the rebels, that he had accepted a position on the staff of John C. Breckinridge. 4. He was posted all over Kentucky, during that occupancy, to make speeches for the purpose of raising troops for the confederate army. 5. He left his home with the retreating rebel army in October, 1862, for the purpose of joining his fortunes with it, and went with them a part of the way out of the State. 6. R. W. Woolley, a rebel major, published a letter in the Louisville Courier, December 19, 1866, in which he recommended Mr. Beck for United States senator, because he had always given the confederacy *secret* support, having furnished money *secretly* for the aid of rebels. All these charges can be substantiated by competent witnesses, if the committee desire them before it.

G. M. ADAMS,

*Chairman Seventh Congressional Union Committee, Kentucky.*

R. C. SCHENCK, M. C.

LEXINGTON, KENTUCKY, June 29, 1867.

DEAR SIR: Inclosed I send you a few lines to Colfax, the Speaker of the House of Representatives, which you will see he gets in time. I hope to send you some of his acts and doings from reliable sources in a few days—*worse* than represented to be.

Go on in your good work, and, for the sake of this great nation and the cause of



justice, don't let a rebel into Congress, let him come from wherever he may, and particularly none from Kentucky. If it is done, woe indeed will be the fate of those who love this glorious Union.

Your sincere friend and well-wisher,

G. M. ADAMS,

*Chairman Seventh Union Congressional Committee, Kentucky.*

Hon. SAMUEL MCKEE,  
*Washington City, D. C.*

I leave the letter to the Speaker open, so you can see what I have written. I would have had my evidence now, but thought until to-day that it was the 30th they met, instead of the 3d, and have been very hurried in what I have said.

G. M. A.

OFFICE KENTUCKY STATESMAN,  
*Lexington, Kentucky, July 1, 1867.*

SIR: The Union men of Kentucky believe they can fully substantiate the charge of disloyalty during the war against all congressmen-elect from this State, save Messrs. Adams and Trimble. The former, though a democrat, served gallantly throughout the war in the federal army; the latter has served one term in Congress.

I have been requested by a number of leading men to write to you and ask that you use your influence to have the credentials of the other gentlemen referred to the Committee of Elections until the evidence bearing upon their disqualifications can be forwarded, which is at this moment in rapid course of completion.

Not anticipating a July session, the committee having the matter in charge did not move as promptly as they otherwise would have done.

The loyal people of Kentucky have no other recourse than to appeal to a patriotic Congress to shield them from rebel domination and persecution.

Very respectfully,

WM. CASSIUS GOODLOE,  
*Senior Editor Kentucky Statesman.*

Hon. R. C. SCHENCK, *Washington, D. C.*

*To the honorable Speaker and members of the House of Representatives of the fortieth Congress:*

On the 5th day of July, 1867, letters were received by the honorable Speaker of this House, by the Hon. Robert Schenck, and by one Samuel McKee, from G. M. Adams and W. C. Goodloe, of Lexington, Kentucky, urging, among other things, that the undersigned should be excluded from a seat in this Congress, because of what they call disloyalty. These letters I find before the Committee of Elections. They contain assertions and charges against me, many of which are utterly false; but with that I have nothing to do at present. I deny that any man or set of men, who are not members of this House, and who are not contesting with me, or claiming any rights themselves to my seat in this Congress, have any right to interfere or prevent me from being qualified, upon any ground whatever. The right of this House to expel me upon proper grounds, made out and substantiated, I admit. This is especially true, when, as in my case, neither of these men pretend to know any facts against me, but request that I should be held in abeyance, and my district left unrepresented for an indefinite period, till they can hunt up or manufacture what they call proof of their charges against me. I was elected on the 4th day of May last, by a majority of 6,664 over the combined vote of both my competitors, and by more than 8,000 over Mr. Brown, the Union candidate, who received the next largest vote. The result of said election was determined by the board of examiners authorized by law to determine the same, on the 27th day of May, 1867, and a certificate thereof forwarded to the undersigned and to this honorable House immediately afterward. The canvass was conducted by public discussions nearly every day for weeks, and every week for months, before my election. I had all the qualifications required by the Constitution and laws. No charges touching my personal disqualification were in any form substantiated during the canvass, as they would have been had any existed.

My competitor, Mr. Brown, about the 9th of June last, published a letter, not now before me, but which will be filed, stating, in substance, that while he would have made any question touching my want of qualification because of disloyalty in any form, he knew of no facts to warrant him in so doing—none had been furnished him; and that being fairly elected, as I was, I was, in his opinion, entitled to my seat.

That letter was published in the newspaper edited by W. C. Goodloe, and taken regularly by Mr. Adams, in the city in which said G. M. Adams resides. Both of them



knew all about it from the time of its publication or before. I reside in the same city, and have a public office in full view of the business houses of both of them. No notice was ever given to me of any intention on the part of any one to object to my qualification as a member, and no notice that any evidence would be taken on that subject, although from the 4th day of May till I started for Washington, on the evening of the 29th of June, such notice could have been given me at any moment.

The act of Congress now in force on that subject provides: "Whenever any person shall intend to contest the election of any member of the House of Representatives of the United States, he shall within thirty days after the result of such election shall have been determined by the officer or board of canvassers authorized by law to determine the same, give notice in writing to the member whose seat he designs to contest of his intention to contest the same, and in such notice shall specify particularly the grounds upon which he relies in the contest." (See 1st volume Brightley's Digest, page 254.) Being section 1 of the act of February 19, 1851.

A subsequent section of the same act provides in substance: "That notice in writing shall be given at least ten days before taking evidence, setting forth the time and place, the names and residences of the witnesses to be examined, and the officer before whom they shall be taken."

Surely the outside parties now claiming the right to contest can occupy no better position than the opposing candidates would, and I insist that the proceeding in this unusual, illegal, and covert form is unwarranted by law, precedent, or usage, and is done solely to gratify private malice, and to deprive the seventh congressional district in Kentucky of the right to be heard and to have her vote cast on the floor of this House on the important questions expected to arise, and I therefore respectfully enter my solemn protest against the right thus to interfere.

Respectfully,

JAMES B. BECK.

---

*To the honorable members of the House of Representatives of the fortieth Congress of the United States:*

The undersigned, who states that he has given notice, as the law requires, of his intention to contest the right of John D. Young to a seat as member of the fortieth Congress of the United States from the ninth district of the State of Kentucky, hereby enters a protest and remonstrance against said Young being permitted to qualify, and against permitting him to assume or exercise any of the duties of a member of the Congress of the United States, and for the following reasons, to wit:

1. That during the late rebellion he (Young) did not remain loyal to the government of the United States.
2. That he voluntarily gave aid, countenance, counsel, and encouragement to persons engaged in armed hostility thereto; that he was in full sympathy, free accord, and entire harmony with persons who were engaged in armed hostility to the government of the United States, and who, during the late rebellion, sought the establishment of a separate southern confederacy.
3. That in 1861, while he held the office of judge of the county court of the county of Bath, to which he was elected in the year 1858, and before entering upon the duties of which he had to take an oath to support the Constitution of the United States, he violated this solemn oath by *aiding, counseling, countenancing, and encouraging* the rebellion against the government of the United States, and also persons engaged in armed hostility thereto.
4. That in 1861 he advised the recruiting of men to fight on the side of the southern confederacy, and advised and advocated resistance to the authority of the federal government by arms, and gave *aid, counsel, countenance, and encouragement* to those who did resist.
5. That he (Young) himself joined the rebel army in 1861, and was a candidate for colonel of a regiment in the same.
6. That he aided armed bands of rebel soldiers in capturing Union citizens and soldiers, and gave this aid voluntarily and gladly.
7. That in 1861, while he was still acting county judge, he boldly and actively advocated the election of John S. Williams, an avowed secessionist, to the Congress of the United States, when said Williams declared himself in favor of resisting by arms the march of the army of the United States into the Southern States, and declared he would join the rebel army if force was used to compel obedience to the laws on the part of the southern people; and also the election of Dr. Parish to the Kentucky legislature, who declared himself in favor of the secession of Kentucky; that said Parish and Williams both, soon after their defeat, went into the rebel army, and he (Young) himself did likewise; that in 1862, while he was still judge of the county court of Bath, when summoned by the United States authorities, in obedience to the orders of the



commander of the Department of Kentucky, to renew his oath of allegiance to the government of the United States, he fled to Canada.

8. That at all times during the late rebellion he was an open advocate of the cause of the southern confederacy, and opposed to the success of the federal armies.

9. That said John D. Young holds the oath which all persons are required to take before entering upon the discharge of their duties as executive, judicial, or legislative officers of the government of the United States, to be *unconstitutional*, and that the whole rebel democratic party to which he belongs in Kentucky hold the same thing; *that he and they deny the right of Congress to require such oath of any officer of the government*, (viz., the oath prescribed by act approved July —, 1862,) and hold to the doctrine that *it is no crime and no perjury*, even if a man has been guilty of aiding the rebellion, to take said oath, and that it is the right of all rebels to take any oath required, and that by so doing they cannot commit perjury.

10. That said Young holds that the rebellion was no crime; that those who engaged in it were justifiable, and that those who engaged in its suppression are guilty of a criminal wrong; that he so held during the war, and declared that "Abraham Lincoln, President of the United States, in using force to suppress the southern rebellion, was a traitor, and ought to be hanged as high as Haman."

All the charges set forth in these ten specifications the undersigned believes he can and will prove to the satisfaction of the House and country. He herewith submits affidavits in substantiation of the charges, and has more witnesses who will prove the same facts, and witnesses who will prove others not herein established, but has not yet taken these affidavits for want of time, and in some cases because the witnesses have refused to appear and testify for fear of violence to themselves or injury to their property by the friends of John D. Young, who claims the seat. He requests that the said Young's credentials be sent to the proper committee for examination, and that he be not permitted to qualify until said committee have reported on his eligibility to a seat in Congress from that proof which will be submitted to them.

Respectfully,

SAMUEL McKEE.

STATE OF KENTUCKY, *County of Bath, ss:*

This day personally appeared before me, a notary public in and for the county and State above named, Samuel McQuithy, who, being duly sworn, states that he is a citizen of the town of Owingsville, county and State above; that he is acquainted with John D. Young, who was on the 4th day of May, 1867, elected as a member to the fortieth Congress of the United States from the ninth district of Kentucky; that in 1861 said Young (as was generally known) favored the right of secession and the cause of the rebellion, and did at the election of 1861 cast his vote for John S. Williams, the disunion candidate for Congress in this district; and that said Young also voted for Dr. J. C. Parish at the August election of 1861, who was the secession or rebel candidate for the Kentucky legislature, against V. B. Young, (said John D. Young's brother,) who was the Union candidate for said office; he further states that said Williams and Parish both advocated the cause of the rebellion, and recommended that Kentucky should secede and resist the general government in case the State was invaded by federal troops; that said Williams and Parish immediately after the election at which they were defeated left with others and joined the organization of rebel troops, whose encampment was at that time at Prestonsburg, in the eastern part of Kentucky; and that said John D. Young did go to said encampment of rebel troops while encamped at said town of Prestonsburg, and remained there some time, and it was generally reported that he ran for the office of colonel of a confederate or rebel regiment, and was defeated for such office, after which he left said encampment; this affiant further states that he is sixty-seven years of age, and has been a citizen of this town and county for thirty-three years.

SAMUEL McQUITHY.

Sworn and subscribed to by Samuel McQuithy before me this 20th day of June, 1867.  
[SEAL.]

R. GUDGELL,  
Notary Public for Bath County, Kentucky.

STATE OF KENTUCKY, *County of Bath, ss:*

This day personally before me, Reuben Gudgell, a notary public in and for said county and State, appeared George H. Graves, who, being duly sworn, states, that in the year 1861, in the fall or autumn of said year, he joined the confederate or rebel army; that at the time he was sworn into and joined the same, at the town of Prestonsburg, in the State of Kentucky, John D. Young, of the county of Bath, and the same who was on the 4th day of May, 1867, elected to the Congress of the United States, came to said town of Prestonsburg in company with a part of a company of men, and joined as a member of the Second Kentucky confederate regiment; that John D. Young was a candidate for and ran for colonel of said Second Kentucky confederate



regiment, but was beaten by Harvey Hawkins, and soon after deserted or left for parts unknown. Said Graves further states that the manner in which said election was held was as follows: Said Young and Hawkins stepped five steps in front of the regiment, and the command was given to the members of the regiment to choose between said men for their officer as colonel, at which time the vote was taken between the two candidates, and Young received a minority of the votes of the regiment; that I was born in the county of Mason, State of Kentucky, and lived there up to the time I left to join said confederate army; and that I have been living in this county (Bath) for the last twelve months past; that I was twenty-four years of age the 31st day of March last.

GEO. H. GRAVES.

Subscribed and sworn to before me by George H. Graves this 14th day of June, 1867.  
[SEAL.]

R. GUDGELL,

Notary Public for Bath County, Kentucky.

STATE OF KENTUCKY, *County of Montgomery:*

This day personally appeared before me T. W. Parsons, who states that in the year 1861 he was a citizen of the county of Bath and State above; that some time during the summer, in the month of June or July, he was at Mud Lick Springs, when John D. Young came to the place from the upper part of Bath County. Said Young was at that time county judge of the county of Bath, and is the same returned as elected on the fourth day of May, 1867, as member of the fortieth Congress. At that time there was a canvass going on for member of the legislature for Kentucky. Van B. Young, brother of John D. Young, was the Union candidate, and Dr. Joseph C. Parish, the secession candidate. The issue was Union or secession. John D. Young was for Parish, the secession candidate. I heard a conversation between H. Gill and John D. Young regarding the state of the country generally. John D. Young took strong grounds in favor of the Southern States, and justified their course, and denounced the United States government, and also the President. Among other expressions he said, "That Lincoln ought to be impeached and hung as high as Haman." Upon the question being put to him by affiant, "What ought to be done with Jeff. Davis?" he answered, "He has violated no constitutional obligation." It was the general understanding and well known that John D. Young in 1861 was one of the most bitter and active rebels in the county of Bath, and was very bitter against Union men. Affiant was in 1861 an officer in a home guard company, armed with what were then called Lincoln guns, and was posted in regard to the status of the citizens of Bath, and the side they took in the contest. In the fall of 1861 it was reported generally that he, Young, was a colonel in the rebel army at Prestonsburg. Affiant does not know that he was, but this was the current report through Bath County in September and October, 1861, before the army of General William Nelson defeated the rebels, on Sandy, and drove them out of Kentucky.

And further saith not.

T. W. PARSONS.

Sworn to before me by T. W. Parsons this 26th day of June, 1867.

E. E. GARRETT,  
P. J. Montgomery County.

STATE OF KENTUCKY, *County of Montgomery:*

This day personally appeared Johnson A. Dawson and Green V. Hall, who state that they are citizens of Powell County, Kentucky; that they were present at the town of Stanton, in said county, when John D. Young, who was a candidate for, and who is returned as elected to, Congress, on the 4th day of May, 1867, made a speech; during said speech, in answer to a question by one of the audience, "Did you rejoice over Union or rebel victories?" John D. Young answered, "I always rejoiced when the rebels gained a victory, because my sympathies were with that side." Said Young also said that in 1862 he had been ordered to report at Sharpsburg and take the oath of allegiance to the government of the United States; that he was not willing to take said oath, and determined he would not take the oath; knew that he would be sent to prison if he refused, and that he went to Canada, and then into Vermont, and remained until fall.

And further saith not.

GREEN V. HALL.  
J. A. DAWSON.

Sworn to before me by J. A. Dawson and Green V. Hall this 24th day of June, 1867.

E. E. GARRETT,  
P. J. Montgomery.



STATE OF KENTUCKY, *County of Montgomery*:

This day personally appeared before me John Donahue, who states that he is a citizen of the county and State above; that he heard John S. Williams, who was a candidate for Congress in 1861, in the ninth Kentucky district, make a speech in the court-house yard in Mt. Sterling. Said Williams was known as the secession candidate, and ran against W. H. Wadsworth, who was the Union candidate. John S. Williams declared in his speech that he had left the North and came back to the land of his nativity, (Kentucky,) and in this contest took his stand with the South. Williams was understood to be the rebel candidate and was voted for by said party, and soon after the August election, 1861, went into the rebel army. Not long before Williams became a candidate for Congress, in 1861, he had lived in Illinois.

JOHN DONAHUE.

Sworn to before me by John Donahue this June 26, 1867.

E. E. GARRETT,  
*P. J. Montgomery.*STATE OF KENTUCKY, *County of Montgomery*:

This day personally appeared before me, police judge of the town of Mt. Sterling, county and State above, Spottswood Dedman, who, being duly sworn, states that in 1861, 1862, 1863, and to June, 1864, he resided in the town of Owingsville, Bath County, Kentucky; that he knew well John D. Young, who, in 1861 and 1862, was county judge of Bath County, and the same who was a candidate for Congress on May 4, 1867, in the ninth district, Kentucky, against Samuel McKee; he states that said Young, from 1861 up to the time he left Owingsville in 1864, was an active rebel, and was so known and regarded generally; that he has often heard said Young talk publicly in favor of the rebellion during the time, and encourage those who were engaged in the same; that, in 1861, when the rebels first began to enlist men for the southern confederacy, said Young was active in aiding them; that said Young sent persons from his own house to the rebels in 1861, when they were encamped at Sy Boyd's and near Joshua Ewing's, in 1861, when troops were first being recruited for the rebel army, and sent provisions to squads of men as they passed out of Central Kentucky to join the rebel armies.

He further states that in the year 1861, in the fall of the year, John D. Young left his home in Owingsville, Kentucky, about the time the rebels were organizing at Prestonsburg under John S. Williams, and was absent from home until after General Nelson began his advance with the federal troops against said Williams; and that during the time of his absence he was reported to be with the rebel army. He further states that in 1862 John D. Young again left his home at a time in the summer, about the month of July of said year, when there was great activity in recruiting federal soldiers going on; and at the time when there was an order requiring rebels and suspected persons to take the oath of allegiance to the government of the United States, said Young went off, it was reported, to Canada, to keep from taking the oath of allegiance, and was absent from home some several months. He states further, that said John D. Young was always on the best of terms with the rebel soldiers whenever they came into Owingsville, either in large or small parties, and was accustomed to inviting and entertaining the officers and men of the rebel army at his own house whenever they came into the State. Whenever the rebels came into the town, the Union men, who were known to be such, staid in their houses or ran off and concealed themselves. John D. Young not only always remained, but was among the very first to make his appearance and welcome them to the town, and was in full fellowship with them while they remained. He states further that John D. Young came home in 1861 with James A. J. Lee, who went off to Prestonsburg or to the rebel army for the purpose of trying to get Harry Connor to return to his family at Owingsville, and that said Lee came back with said Connor, and Young also came with them. He states that Connor and Young went off early in the fall of 1861. After the troops of General Nelson had encamped at Mud Lick, or Olympian Spring, Lee went off to bring Connor back, and that he returned with Connor, and Young accompanying them, after General Nelson had begun his advance against the rebels, said then to be at West Liberty.

his  
SPOTTSWOOD + DEDMAN.  
mark.

Attest:

H. C. RAINEY.  
WM. L. WILSON.

Sworn to before me by Spottswood Dedman this the 26th day of June, 1867.

E. E. GARRETT,  
*Police Justice, Mt. Sterling.*



STATE OF KENTUCKY, *County of Montgomery :*

I, James R. Garrett, clerk of the county court of the county and State above, certify that E. E. Garrett, whose signature is attached to the several affidavits hereto attached, is judge of the police court of Mt. Sterling, a justice of the peace, and duly authorized to administer oaths, and that his signature is genuine.

Given under my hand and seal of office this the 26th day of June, 1867.

J. R. GARRETT, *Clerk,*  
By T. H. SUMMERS, *D. C.*

STATE OF KENTUCKY, *County of Montgomery :*

This day personally appeared before me, police judge of Mt. Sterling, Kentucky, James Hall, who states that in the year 1861 he was a resident of the county of Bath, and town of Owingsville, Kentucky; that he knew well John D. Young, who was then a citizen of said town and county, and was at that time county judge of the county of Bath, and is the same who, on the 4th day of May, 1867, ran for Congress in the ninth district of Kentucky. He states that John D. Young was then an active and violent rebel; that he declared himself at all times in favor of the rebellion of the Southern States, and declared that Kentucky ought to join them; that he talked it publicly on the streets, that Kentucky ought to raise troops to fight against the government and in behalf of the southern confederacy; and that he has often heard him encourage and advise young men to go out and join the southern armies, for the purpose of resisting the federal armies. He states further that he saw provisions sent from the house of said John D. Young by the basketful, and hauled away in his cart, to feed rebel squads of men who were passing out of Central Kentucky for the purpose of going into the rebel armies, and this at the time when John D. Young was at his house and at his own home, and that those provisions were sent by Young by his own hands—men whom he had employed and who drove the cart containing the baskets of provisions to the rebel camps. He states further, that in 1861 John S. Williams was the rebel, secession, or disunion candidate for Congress at an election held on the 20th of June, of said year; that said Williams declared himself in favor of Kentucky seceding and going with the southern confederacy in case force was used to compel obedience to the laws on the part of the Southern States and people; that John D. Young supported John S. Williams, and advocated his election, and that soon after Williams's defeat he went off and joined the rebel army. He further states that in the county of Bath, during said year 1861, there was an election held in August for member of the State legislature. That Van B. Young, brother to John D. Young, was the Union candidate, and Dr. Parish the secession or disunion candidate; that the issue was a plain one, Union or secession, and that John D. Young supported the secession or disunion candidate; Dr. Parish also openly advocated his election over that of the Union candidate, Van B. Young. That Dr. Parish was beaten, and soon after left his home and went to the rebel army; and that John D. Young himself, in the fall of the same year, also went off to the Sandy country, where the rebels were organizing under John S. Williams & Co. Whether said Young joined the rebel army or not this affiant does not know, but he does know that it was currently reported that he ran for colonel of a rebel regiment at Prestonsburg and was defeated, and also heard it stated that Young left the rebel army because he did not get the office of colonel in one of the rebel regiments. Thomas D. Young, father of John D. Young, was chairman of the convention at Owingsville which nominated John S. Williams, secession candidate for Congress, (at least this is now the recollection of affiant,) and John D. Young was an active member of the same. Through the whole war John D. Young was known to be strongly in favor of the rebellion, and always spoke in its favor and against the federal government.

And further saith not.

JAMES HALL.

Sworn to before me by James Hall this the 18th day of June, 1867.

E. E. GARRETT,  
*Police Justice Mt. Sterling.*

STATE OF KENTUCKY, *County of Montgomery :*

This day personally appeared before me John J. Evans, who states that he was provost marshal of Montgomery County in 1861, under appointment from General Jerry S. Boyle, then commanding the district or department of Kentucky; that a part of his duty was to arrest disloyal and suspected persons, and require them to take the oath of allegiance; and that the printed copy hereto attached is the oath rebels were then required to take. Upon their refusal to take the oath when summoned, such persons as refused were sent to prison.



*The oath.*

The oath administered under the authority of the commander of the Department of the Cumberland to suspected persons is as follows:

"STATE OF KENTUCKY, *County of Jefferson, set:*

"I, ———, of my own free will and accord, without any mental reservation or evasion, do solemnly swear that I will support the Constitution of the United States and the laws made in pursuance thereof; and that I will not do any act inconsistent with my duties as a true and loyal citizen of the same, and that I will not take up arms against the United States or the State of Kentucky, nor hold any communication with, or give aid or comfort, directly or indirectly, to, any person or persons belonging to any of the so-styled Confederate States who are now or may be in rebellion against the government of the United States. So help me God.

"Sworn and subscribed before me this — day of ———, 186—.

"———."  
"———."

The person taking the oath writes his own name in the blank in the first line. The obligation is complete. The most ingenious quibbler can find no imperfection in it. The man who takes it, and then, by favoring the rebellion, proves false to his allegiance, is an accursed perjurer before God and man.—(*Louisville Journal*.)

And further saith not.

JOHN J. EVANS.

Sworn to before me by John J. Evans June 26, 1867.

E. E. GARRETT, *P. J. M. C.*

STATE OF KENTUCKY, *County of Nicholas:*

This day personally appeared before me, J. M. Chevis, circuit court clerk in and for the above county and State, John Miller, who states that in the year 1861, and up to the year 1864, he was a citizen of and resided in the town of Owingsville, Bath County, Kentucky; that he knew well John D. Young, who, from 1858 to 1862, was county judge of the county, and is the same returned as member of the fortieth Congress of the United States for the ninth district of Kentucky. He states that in 1861 John D. Young was known and recognized as a violent and bitter rebel, and to be in favor of secession and the cause of the southern confederacy; that he was bold in his language in denouncing the government of the United States, and that his house was a place of resort for the rebels, and that at different times they held caucuses at said John D. Young's house, and at one time he counted sixteen rebels assembled there, and that they were dispersed by a body of Union men throwing brickbats into the crowd, and that it was, in fact, general headquarters for the rebels. About the time the rebels began to assemble under John S. Williams and others at Prestonsburg, said Young and many others from Bath County went off to the said encampment, and he (Young) was absent from home several weeks, and it was reported through the county that he had gone to the rebel encampment to get the position of colonel in the rebel army. Affiant says that he heard a conversation between said Young and Joshua Ewing, on the streets of Owingsville, and said Ewing charged Young with having taken his sons off into the rebel army, and that he (Young) was too big a coward to stay with them, or language to that effect; that in 1862 John D. Young, when summoned to appear before the provost marshal to take the oath of allegiance, fled the country, and was absent from home several months, and it was generally reported by his rebel friends that he had gone to Canada to take the oath to the British government; and that when the draft was ordered in Kentucky, his (Young's) rebel friends reported that said Young was not subject to draft on account of his being a British subject.

JOHN MILLER.

STATE OF KENTUCKY, *County of Nicholas:*

Sworn and subscribed to before me by John Miller this the 26th day of June, 1867.

JNO. M. CHEVIS,  
*Clerk Nicholas County Court.*

STATE OF KENTUCKY, *County of Nicholas:*

This day personally appeared before me, ———, in and for the above county and State, John Miller, who states that in the year 1861, and up to the year 1864, he was a citizen of and resided in the town of Owingsville, Bath County, Kentucky; that he knew well John D. Young, who from 1858 to 1862 was county judge of the county of Bath, and is the same returned as member of the fortieth Congress of the United



States for the ninth district of Kentucky. He states that in 1861 John D. Young was known and recognized as a violent and bitter rebel, and to be in favor of secession and the cause of the southern confederacy; that he was bold in his language in denouncing the government of the United States, and declared himself in favor of raising troops to resist the government of the United States, and for having these men go and fight on the side of the southern confederacy. About the time the rebels began to assemble, under John S. Williams and others, at Prestonsburg, said Young and many others from Bath County went off to the said encampment, and he (Young) was absent from home several weeks, and it was reported through the county that he had gone to the rebel encampment to get the position of colonel in the rebel army. He states that Young had boasted that he was instructed to take Joshua Ewing's sons to the rebel army; that Ewing's sons did go to the rebel army, and that when John D. Young returned to Owingsville, after General Nelson with the federal troops advanced against Williams's rebel forces, Joshua Ewing said to Young that he (Young) could coax his boys off to the rebel army, but would not stay himself, and that he regarded the act as a cowardly one. At one time, during 1861, while affiant and other Union men were on the watch for rebel movements, John D. Young and three others went out of Owingsville late one night, each carrying bundles. Young did not return to town that night, but came in the next night. [Here state about the time this occurred, and whether the bundles were clothing or provisions, or what.]

In 1862 John D. Young, when summoned to appear before the provost marshal to take the oath of allegiance, fled the country to Canada, and was absent from home several months. He and a Mr. Fassett went off together. On his return he stated that he was a "British subject," and had taken the oath of allegiance to Queen Victoria. Affiant states that John D. Young was always talking against the federal government and in favor of the rebel cause, and always rejoiced when the rebel armies gained a success.

STATE OF KENTUCKY, *County of Nicholas* :

Sworn to before me by John Miller this — day of June, 1867.

---

STATE OF KENTUCKY, *County of Montgomery* :

This day personally appeared before me, a notary public in and for said county and State, Thompson B. Oldham, who states that, during the late canvass for Congress in the ninth congressional district for Kentucky for member of the fortieth Congress, he attended a political meeting at Stanton, in the county of Powell, at which meeting John D. Young, who was a candidate, and whom the State board of canvassers has certified received a majority of the votes cast, made a speech. In the course of said speech John D. Young said that during the late rebellion his feelings and sympathies were through the whole war with the rebel armies, and that he desired their success over the Union armies. Also, that in 1862 he was notified by F. Sharpe, provost marshal of Bath County, to report to him and take the oath of allegiance to the government of the United States; that upon being notified, and not willing to take said oath because his feelings were for the rebellion, and he desired its success, he left the State and went to the State of Vermont; that he went off because he did not intend to take the oath, and knew that he would be sent to Camp Chase or some northern prison, and shut up there for his refusal. He stated that he also went to Canada, but only remained there one night, and the remainder of the time he was absent—about three months—he remained in Vermont, the northern portion of the State. He also stated in the same speech that he went to the rebel camp at Prestonsburg, Kentucky, in 1861, but that he went there for the purpose of bringing home a brother-in-law of his; that at the time he went to Prestonsburg the rebel forces at that place had not organized, but were there for the purpose of organizing.

And further saith not.

THOMPSON B. OLDHAM.

Sworn to before me by Thompson B. Oldham. Witness my hand and notarial seal, this the 13th day of June, 1867.

[SEAL.]

G. E. MILLER,  
Notary Public for Montgomery County.

---

STATE OF KENTUCKY, *County of Bath*, ss :

This day personally appeared before me W. S. Sharp, who states that he is a citizen of the above county and State; that he held the office of provost marshal of Bath



County, Kentucky, in 1862, under an appointment from General J. T. Boyle, who then commanded the Military Department (or district) of Kentucky; that he had instructions to arrest and require all disloyal suspected persons to take the oath of allegiance to the government of the United States; that in obedience to said orders, he summoned, among others, John D. Young, the same who is returned elected as a member of the fortieth Congress of the United States from the ninth Kentucky district; that he had an interview with said Young, in which he took grounds that the war was not a rebellion, but a revolution; that he put the question to said Young, "Do you think the South had just cause for revolution against the United States?" He answered he thought that they had. That he paroled the said Young until a certain day fixed upon; that he went to Louisville, Kentucky, and reported his case to General J. T. Boyle, and he (Boyle) told him to send J. D. Young to Camp Chase, Ohio; that he was unavoidably detained at Frankfort, Kentucky, for two days, and that the said Young did, as he was informed, appear at his office on the day he was required to do so, but not finding any one authorized to take charge of him, he left for parts unknown to affiant.

And further saith not.

W. S. SHARP.

Sworn to before me by W. S. Sharp June 26, 1867.

E. P. VAN PELT,  
*Justice of the Peace, Bath County.*

MT. STERLING, KENTUCKY, June 27, 1867.

SIR: John D. Young will present himself, on the assembling of Congress, for admission to a seat. I do hope there will be backbone enough to respond at once to his demand, and say no rebel or sympathiser shall ever put his head in the hall to represent any one. If such a man is allowed, why not Jeff. Davis or John Morgan, or the devil himself, if you please? The bare suspicion should be sufficient, after the experience we have had, with a debt of such magnitude. The thousands of lives that this damnable war has cost, ought to be sufficient warning, or will we never learn only as fools let us? Strike at the root and say no rebel shall ever vote or hold office, federal or State. Our friends should meet and resolve to do justice to the dead and living, punish traitors, and reward those who have risked all to save the country. Action is all that we need; no long-winded speeches are necessary, and if the President vetoes the bill veto him; and if Kentucky don't like what Congress has done or may do, let her secede—she needs thrashing; and then exterminate all rebels: follow it up with confiscation. It is high time we had ceased using quackery; but use strong medicine, as our body politic is awfully diseased. Sam. McKee is entitled to his seat, and ought to have it without a word; and if the republican party intend holding power it must hold no doubtful ground, but dash right at traitors and crush out treason, and reward her sons everywhere. Make treason odious everywhere, so that men may know whether there is a living party in the country willing to meet treason at the threshold and rebuke it. Write me soon on the views herein contained.

Yours respectfully,

JOHN JAY ANDERSON.

HON. JOSEPH S. FOWLER.

I am well acquainted with the writer. There is no truer man in Kentucky, and no better patriot or republican. His opinion merits the respect and attention of Congress.

JOSEPH S. FOWLER.

*To the honorable the members of the House of Representatives of the fortieth Congress of the United States:*

We, the undersigned, Union men of the county of Bath, respectfully represent that John D. Young, who is returned as member-elect to your honorable body, has been disloyal to the government of the United States. We therefore protest against his being permitted to qualify, ask that his credentials be sent to the proper committee for examination, and feel satisfied that it will then be shown to the satisfaction of the House and country that he has given aid and encouragement to the enemies of the government of the United States.

John E. Rice.

B. F. Rice.

J. G. Rice.

Joshua Flemming.

R. L. Tipton.

W. M. Reeirely.

W. R. Howard.

Enoch Mills.

Lafayette North, col.

Henry Mills.

Joseph Toy.

Jasper Warren.

Patrick Warren.

Obadiah Teal.

J. B. Tipton.



William Harrison.  
David C. Noris.  
John Daniel.  
B. F. Daniel.  
S. M. Wills.  
L. Warner.  
John Noris.  
James Noris.  
Richard Noris.  
Charles Daniel.  
Richard Daniel.  
Alexander Spencer.  
John T. Karricke.  
Travis Warner.

Oridy Spoyonge.  
W. M. Walton.  
Thomber Ferzotill.  
Thomas Karricke.  
David Stratton.  
Hugh Karrick.  
George Staton.  
Samuel McQuithy.  
Elias McQuithy.  
Christopher McQuithy.  
John M. Cartmill.  
Jas. L. Warren.  
Felix Warren.  
John Deckers.

S. C. McClain.  
John Gillon.  
Philip Williams.  
Fletcher Donalson.  
James Staton.  
B. F. Allington.  
W. W. Strop.  
G. W. Sorrell.  
Hugh Lowery.  
Jos. Lowery.  
James Warren, jr.  
Joseph Wells.  
Edmond Mills.  
Jack Davis.

---

*To the honorable the members of the House of Representatives of the United States of the fortieth Congress :*

We, the undersigned, citizens of the county of Montgomery, State of Kentucky, respectfully represent that John D. Young, who is returned as a member-elect of your body, is charged with having been disloyal to the government of the United States, and with having given aid to the enemies thereof during the late rebellion.

We therefore protest against the said Young being permitted to qualify as a member, and ask that his credentials be sent to the proper committee, and, when examined, believe it will be shown to the satisfaction of the House and the country that said Young has not been loyal to the government of the United States.

H. C. Rainey.  
John Wood.  
J. P. Nelson.  
T. B. Oldham.  
George Beatty.  
John Donohew.  
J. W. Rose.  
T. F. Poynter.  
James H. Fizer, ex lieutenant.  
A. S. Thomas.

Charles Fizer.  
A. T. Wood.  
J. G. Haggard.  
G. W. Gist.  
John E. Fisher.  
Samuel Fizer.  
Chas. W. Parsons.  
E. A. Thomas.  
S. P. McMahan.  
W. H. Jameson.

James Taylor.  
James Gibson.  
John Q. Evans.  
H. C. Howard.  
J. H. Rollins.  
J. McMahan.  
John Jay Anderson.  
B. F. Kirtley.  
Morison T. McCormick.  
Matthew Poynter.

---

OWINGSVILLE, BATH COUNTY, KENTUCKY, June 24, 1867.

SIR: I acknowledge the receipt, on the 15th instant, of your notice of intention to contest my right to a seat in the fortieth Congress, as a member for the ninth district, and your reasons for so doing. After your explicit declaration to me, before a large and intelligent audience, at Maysville, that you would not contest my right to a seat in Congress if I should be elected by a majority of the legal voters of the district, and your equally explicit recognition of the right of returned rebels, under the constitution and laws of Kentucky, to vote at the election, you will pardon me if I express my surprise at your want of good faith, and your open violation of your pledges to the people, in this attempt to obtain a place in Congress which the people of the district refused so decidedly to award you. As I intend to maintain by every fair and honorable means the right of this people to be represented in Congress by the man of their choice, and my right by virtue of their suffrages to be that representative; and as the act of Congress in regard to contested elections imposes upon me the duty of replying to your notice of its specifications, I shall proceed to do so with all the freedom which truth and justice will warrant.

In answer to your first assignment of reasons, I deny there is one word of truth in your charge that I did not remain loyal to the government during the rebellion, or that I, voluntarily or otherwise, gave aid, counsel, or encouragement to persons engaged in armed hostility thereto; or that I was in full sympathy, free accord, or entire harmony with such persons. That I did sympathize with the people of the South in their misfortunes, privations, and sufferings, I do not deny. I must have rooted out of my own heart the common sentiments of humanity to have been capable of feeling otherwise. With this exception, I pronounce all and every part of said charge false, scandalous, and unjust. Nor is it true that in 1861, or at any other time, I avowed myself in favor of raising or arming troops in Kentucky to resist the federal government, in case the President sent an army south to coerce and compel obedience upon the part of the



southern people and States to the laws of the United States; nor did I countenance, advise, counsel, or encourage, in the county of Bath or elsewhere, the raising or recruiting of men for the purpose of resisting the authority and laws of the United States.

It is true I voted for John S. Williams for Congress in 1861, but I deny that the vote I then gave can be construed into an act of disloyalty then or now. John S. Williams was not then a disunion or secession candidate, nor did I vote for him as such. He occupied a position then occupied by some of the best Union men of the State. Your charge that I voluntarily gave information by which Union soldiers were captured by armed bands of rebels is scandalously false, vile, and disgraceful, but I will not, from self-respect, characterize my denial by the use of such indignant terms as its injustice and wantonness would fairly authorize. I shall content myself with saying—for I will not assume that you invented the slander—that whosoever informed you I so acted is a knave and calumniator. It is not true I voted for Charles A. Wickliffe in 1863, nor was I in the convention by which he was nominated. It is not true that Governor Wickliffe was a disloyal man, nor can the party which nominated and supported him be justly considered traitors or treasonable. If I had voted for him it would have been with no disloyal intent, nor would such a vote have afforded any pretext or justification for your untruthful aspersions of my fidelity and loyalty to the government and its Constitution and laws. I cast no vote from 1861 until 1865, when I voted for Colonel Smith Hurt for Congress and B. D. Lacy, esq., for the legislature; the former a Union officer, who had served gallantly four years in the army, and the latter a well-known and leading Union man of Bath County. Your denunciations, therefore, of Governor Wickliffe and the party by which he was nominated and supported, as "treasonable and traitorous," have no application to me, were inconsiderate and irrelevant, and need no further notice.

In reference to your charge that when summoned in 1862, by the United States authorities, to take the oath of allegiance to the government of the United States, I refused and fled to Canada province, is false in fact and inference. I never refused to take the oath of allegiance when rightfully required to do so, nor did I flee to Canada. I was a judicial officer and had taken the oath.

Your inference that none but disloyal men could be required to take oaths of allegiance, or be threatened with arrest, is as ridiculous as most of your accusations against me are false. The distinguished examples of Colonel Wolford, General Huston, Colonel Jacob, and many other good Union men, might well be quoted to your discomfiture. These men are as truly loyal as you so noisily and boastfully pretend to be, and yet they did not escape ignominious imprisonment nor shameful persecution. Your next charge is that, in 1861, I voted and acted with the secession and disunion party, and in addition to voting for John S. Williams, I voted for Dr. Thomas C. Parrish, who ran as the secession candidate for the legislature, and that I was loud in my denunciations of the government of the United States, and declared myself freely for secession and the southern confederacy. To this accusation I interpose an emphatic denial, in whole and in part, except that I did vote for Dr. Parrish. The question of disunion was not then at issue, and I understood and believed Dr. Parrish was not a secession candidate. I did not hear either of the gentlemen upon the stump.

You conclude your first specification of reasons why you are entitled to be admitted to represent a people who refused to choose you, by asserting that during the late canvass I declared I left the county in 1862 for the reason I could not and would not take the oath to support the Constitution of the United States, because I was in favor of secession, and desired the rebellion to succeed. I hope you do not make this charge upon any knowledge you claim to have derived from our intercourse during the canvass, for you know well it would be an unmitigated falsehood, if so founded; and if you derived it from others, I can assure you your informants have been guilty of audacious falsehood. I made no such statements during the canvass, or at any other time. The whole charge is a malicious and wanton untruth, therefore the votes cast for me on the 4th of May were and are void, and my election a nullity. You are certainly "a most wise and learned judge," and well read in the Constitution of your country, and can readily point out the provision of that instrument which makes either or all of the acts alleged, even if they were true, a disqualification. You will do me and the country a favor if you will condescend to indicate where such a provision may be found. No lawyer or statesman has discerned it, and if you will only refer me to it, I will, with unalloyed pleasure, proclaim you a sage lawyer and profound statesman. Your second specification of your reasons why you should be admitted to take a seat in Congress which the people of your district refused to elect you to, is that returned rebels, "who have been and still are exempt from amnesty and pardon, to the number justly exceeding that of my reported majority, to wit, more than two thousand," voted for me in the various precincts of the district, and that such votes were illegal and are void. You give unusual prominence to this charge, and repeat it in your third specification. You rely upon it, as possibly the most certain and conclusive, in your array of reasons for my exclusion from the office and position to which I have been elevated by the free and unbiased suffrages of the people of my congressional district. Like all the rest of your



reckless allegations, it happens not to be sustained by the truth. Returned rebels did not vote for me to the number alleged, nor to one-third that number. I have taken some pains to inform myself upon that subject, and if the votes of that character received by me in the whole district exceed six hundred and fifty, I am greatly mistaken. Some voted for you, and if they were illegal when cast for me, surely they must not be counted when cast for you. But, after your acknowledgment at Maysville that the constitution and laws of Kentucky made them legal voters, with what force can you now declare them illegal and void? The right of suffrage in Kentucky is regulated by the constitution and laws of Kentucky, and no other authority on earth has the power to enlarge, diminish, or control that right.

Your third specification is but a repetition of the second, and is sufficiently responded to above. Your fourth ground of contest is, that fraud, intimidation, and violence were practiced in various counties and the precincts of counties on the day of the election, by my friends, and that, by reason thereof, many Union men, who otherwise would have voted for you, were prevented from doing so; that armed men, who had been in the rebel army, were present at the polls, and threatened to murder Union men and destroy their property if they voted the Union ticket, (i. e., for you,) and that by such threats and violence many men who would have voted for you were deterred from doing so, and the election was not, therefore, "free and equal," but illegal and void. I have no personal knowledge of any such fraud, violence, or intimidation, and until your notice never heard of anything of the kind having occurred in any county or precinct. Having every reason to know that every material thing contained in your former charges was false and untrue, I do not hesitate to say that this charge is equally false and unfounded. In your fifth specification you charge that at each voting place in the district illegal votes were polled for me to a number greater than my reported majority; and that votes offered for you, which were legal, were refused. This is unqualifiedly false. I know of no illegal votes cast for me in any part of the district nor of any legal votes offered for you which were refused. The recklessness of your allegations and the desperation of your cause are well illustrated by the character of this charge. You assert that in each voting place of the district I received illegal votes to a greater number than my majority, when you well know that at no single voting place was that number of votes cast.

In regard to your sixth charge and specifications, that the laws of the State were not complied with in the appointment of officers who conducted the election in various counties and precincts, and that the men selected were not qualified to act, and that their acts were fraudulent and void, I say the charge is false in all its particulars, and deny that in consequence of the action of said officers any votes were prevented from being cast for you which otherwise you would have received, or that there was any illegality in said election.

To the seventh and eighth charges, without repeating them here, I interpose an unqualified denial, and say they are false and unfounded in each and every particular. As to the ninth of your charges and specifications, that the freedom of the canvass was not permitted to you and your friends, and that in certain counties of the district you and your friends were not permitted to speak in advocacy of your election, and that you were compelled to be accompanied by an armed force to defend your life from the threatened violence of my friends, it is a flagrant falsehood and slander. If you took armed men with you to the several speaking places in the district it was not because of any threatened violence upon the part of my friends, but because of your own intemperate and insolent conduct, which was well calculated to provoke resentment and violence. Instead of your being prohibited in any part of the district from the utmost freedom of discussion, you were permitted to speak everywhere without molestation, and were listened to with great attention, although your speeches were characterized by the most bitter malignancy toward your political adversaries ever shown by a public speaker. You vilified, slandered, and abused the democratic party wherever you spoke, and it is only a wonder that a brave and free people showed so much gentlemanly forbearance and moderation under such provocation. You claim that Colonel Baker was not allowed to speak in your favor at Germantown. Colonel Baker went there to speak for himself, he being a candidate for lieutenant governor, and not particularly for you.

Your tenth and last charge assumes that, excluding illegal votes cast for me, you had a majority of the legal voters in the district, and are therefore rightfully elected. This is not true; but I affirm that of the legal votes cast in the district I have a much larger majority than that ascertained by the board of examiners. Many illegal votes were cast for you in all the counties, and these were procured by fraud, intimidation, bribery, and corruption.

Against your unfounded charges, and in resistance of your arrogant claim to have and hold the position to which the people of the district refused to elect you, I shall maintain that I have been fairly elected by a decided majority of the votes cast at the election held on the 4th day of May last, for member of the fortieth Congress from the ninth district of Kentucky; that the returns of my election to said office have been duly



made and approved by the officers appointed by law to receive and decide them; that I have all the qualifications required by the Constitution of the United States, being twenty-five years of age, a native citizen of the United States, and an inhabitant of the State of Kentucky at the time of my election, and am entitled to take and occupy my seat under said Constitution. I deny that Congress has any right to enlarge or abridge, add to or take away from, said qualifications, or that I can be made amenable to any act of Congress requiring other or different qualifications than those prescribed by said Constitution. Even conceding that Congress has such a power, I deny that I have done or committed any act which brings me within the proscriptive provisions of any of its enactments in regard to members of that body. And now having fully met and answered each and every allegation you have made against me as affecting my right to hold the position to which I have been elected by the people, and asserted my claim as the member rightfully chosen, permit me to notify you that I will prove and rely upon the following facts:

First. You were not elected by a majority of the qualified voters of that district, but were defeated by a majority of 1,477 of the legal electors.

Second. Many of the votes which you received at the various election places in the counties of Lewis, Greenup, Morgan, Rowan, Carter, Boyd, Magoffin, Pike, and Johnson, and other voting places in this district, were procured for you by bribery, corruption, purchase, and fraud.

Third. Because you and your friends, in violation of the laws of the State of Kentucky, and in fraud of my rights as a candidate, expended large sums of money in the counties named in the preceding paragraph to debauch and corrupt the electors, and by which means you procured to be cast many votes in said counties for you which otherwise would have been cast for me.

Fourth. You took with you to the places of discussion in the several counties an armed body of reckless and violent men, under the pretense of protecting you from alleged threatened violence, but in fact and truth to overawe and intimidate the electors of the district from casting their votes in accordance with their own free sentiments; and by which immoral, illegal, and violent practice many men in the said counties were constrained to vote for you who otherwise would have cast their votes for me.

Fifth. You were accompanied at various of your appointments in the several counties of this district by officers of the federal government clothed with power and patronage, and who went with you to aid in controlling public sentiment in this district, and thus brought the power and patronage of the federal government into conflict with the freedom of elections.

Sixth. In the various precincts of the several counties in the district illegal votes were cast for you by men not of the proper age, by men not having the proper residence, by men not naturalized, and by men whose votes were bought by money and obtained by threats, intimidations, and violence, to a number in the aggregate greater than the ex-rebel votes cast for me.

Very respectfully,

JOHN D. YOUNG.

Hon. SAMUEL MCKEE.

*To the honorable members of the House of Representatives of the fortieth Congress of the United States:*

We, the undersigned, Union men of Fleming County, Kentucky, respectfully represent that John D. Young, who is returned as a member elect to your body, is charged with having been disloyal to the government of the United States, and with having given aid to the enemies thereof during the late rebellion. We therefore protest against the said Young being permitted to qualify as a member, and ask that his credentials be sent to the proper committee, and, when examined, believe it will be shown to the satisfaction of the House and country that said Young has not been loyal to the government of the United States.

Jas. A. Andrews.  
Ch. R. Denry.  
S. F. Warden.  
Will. L. Smith.  
H. Metcalfe.  
A. C. Miller.  
James M. Bowman.  
G. W. Denney.  
H. O. Hammers.  
W. H. Webster.  
D. S. Morrison.

M. H. Faris.  
John A. Anderson.  
John M. Gray.  
N. Hurst, jr.  
Eli J. Rigdon.  
Samuel Clark.  
John A. Steddum.  
H. Magsmen.  
James W. Turner.  
Newton Debell.  
S. T. Keith.

H. Bounan.  
Geo. Hammers.  
Thomas Shanklin.  
William, Newdigate.  
M. Hickerson.  
N. T. Hurst.  
Robert White.  
J. H. Warder.  
J. M. Rogers.  
M. P. Wallingford.



STATE OF KENTUCKY, *County of Bath* :

Be it remembered that on this 20th day of June, 1867, before me, R. Gudge, a notary public for said county and State, personally came W. H. T. Moss, who, being duly sworn, on oath says: I am a resident of said county and State; I am well acquainted with John D. Young, who was a candidate for Congress against Samuel McKee in the ninth district of Kentucky at the May election of 1867, and have been well acquainted with said Young for fifteen years. I know that said Young was an ardent supporter of Colonel John S. Williams, the rebel candidate for Congress, against Hon. W. H. Wadsworth, in the spring of 1861; that he continued to support the candidates and parties during the war who were opposed to the prosecution of the war; that he was regarded by his neighbors and most intimate friends as a strong rebel sympathizer; that he was made glad and rejoiced when the Union soldiers and armies were defeated and the rebels victorious. In the year 1861, on the street in the town of Owingsville, I heard said Young, in a discussion with another gentleman who claimed to be a Union man, say that he would take the Union man's sons and go to South Carolina and fight the damned Yankees. The sons of said man did go and join the rebel army at Prestonsburg, Kentucky; that during the war, when the rebels in military force would chance to come to the town where said Young resided, they were seemingly welcomed by him, and the officers and soldiers taken to his house as guests; that on account of his notorious disloyalty in 1862, and to avoid the taking of the oath of allegiance, he fled to Canada and remained out of Kentucky several months and until after the rebels under Generals Bragg, Smith, and Marshall invaded Kentucky and had military possession of his home, when he returned. My judgment and opinion is that said Young was supported and elected by the votes of the disloyal men of the district, and wholly on account of his known steadfastness to their "lost cause," and that he cannot represent the loyal people of the district. Said Young was judge of the Bath County court from 1859 to August, 1862.

W. H. T. MOSS.

Subscribed and sworn to before me this the day and year above written.

[SEAL.]

R. GUDGE,

*Notary Public for Bath County, Kentucky.*STATE OF KENTUCKY, *County of Montgomery* :

This day personally appeared before me, a notary public in and for the county and State above, Willis Hockaday, who states that in the year 1861 he was at work at Raccoon furnace, in the county of Greenup, Kentucky; that in the month of September or October of said year a band of rebels came to said place from the Upper Sandy country on a raid; that they captured a number of men and carried off a large number of horses and other property. Affiant states that he himself was captured by these rebels and carried off, but after four or five days made his escape. John D. Young, of the county of Bath, and the same man who was, on the 4th day of May, 1867, elected to the fortieth Congress from the ninth Kentucky district, was with said band of rebels, and was in command of the same, representing himself as a colonel, and was by the men under him called by that title. Affiant was captured in the night, taken out of his bed, and ordered to get up and go with them, which he did. During the night affiant did not recognize any of the persons, but the next day saw Young among the men and commanding them. After his escape he made his way toward Camp Dick Robinson, and on his way through Owingsville, Bath County, related the circumstance and was then told that Young was absent from home and had gone to the rebel camp at Prestonsburg. After his capture he was taken through Grayson, Carter County, and up Little Sandy to Dry Fork. At night affiant made his escape.

And further saith not.

his  
WILLIS + HOCKADAY.  
mark.

Attest:

E. A. THOMAS.

J. P. NELSON.

Sworn to before me, by Willis Hockaday, who states, in my presence and the presence of the witnesses whose names appear above, that he has heard the foregoing affidavit read, and has fixed his mark to his name to the same, and that its statements are true.

Witness my hand and seal this 15th day of June, 1867.

[SEAL.]

G. E. MILLER,

*Notary Public for Montgomery County, Kentucky.*



The Clerk read as follows :

*To the honorable representatives of the fortieth Congress :*

My attention has been called to a most extraordinary paper, signed Samuel McKee, laid on the desks of members, and referred with my credentials to the Committee of Elections. As that paper is designed to prejudice me in the judgment of members of the House, and may affect my right to a seat, I deem it my duty to answer it.

I am the representative elect to this Congress from the ninth district of Kentucky. It is a district which has been represented throughout the war; it is in a State which did not secede. My majority in a peaceful constitutional election over Samuel McKee, the signer of the paper referred to, was 1,479, and was more than 600 over both my competitors, there being three candidates. My seat has been contested by Samuel McKee for reasons expressed in his notice of contest, and answered in my reply, both of which documents, I presume, are before the Committee of Elections. The issues there made will be met at the proper time and in the proper manner. It is sufficient at this time for me to say that I shall abide the result with confidence.

The question raised by the paper signed Samuel McKee, a paper without a precedent in the legislative history of our country, affects my right to sit in Congress pending the contest. I understand the settled usage in legislative bodies in this country and England to be that the person holding the certificate of election, which gives a *prima facie* right to sit, shall be sworn in and act until otherwise decided upon the proofs submitted in the contest. Holding the *prima facie* title to the seat, under this rule I ought to be admitted. The paper signed Samuel McKee is leveled against my right to sit pending the contest. Because it has been received by the House of Representatives and referred to the Committee of Elections; because it has been printed and laid on the desks of members; and because it may have had some influence upon the minds of members and on the action of the House, I deem it proper to respond to this paper, irregular as it is.

In the first place, I desire to call attention to the fact that said paper nowhere charges that I am not the legally chosen representative of the ninth district of Kentucky, chosen by a fair and free vote, and by an unquestioned majority.

In the next place, I invite attention to the fact that said paper nowhere pretends that its signer, Samuel McKee, a competing candidate and a contestant for the seat, is entitled to represent said district in Congress.

All the objections urged in said paper against my right to sit in Congress are purely personal. Whether true or false, the questions of fact and of law which may arise upon them are, if proper subjects for examination at all, only rightfully examinable on the trial of the main contest to the seat I claim.

But, protesting for the present in behalf of my constituents and of the sovereign State of Kentucky against the right of any power or body to inquire *in limine* beyond the certificate of election I hold, I will, for the information of members of the House, and to afford them all aid in my power in arriving at a just conclusion in the premises, notice and answer in order the several allegations of fact set forth in the paper signed Samuel McKee.

The first, second, and third charges against me by said McKee, assigned as "reasons" why I should not be admitted to a seat in the House of Representatives, are based upon allegations that I have been disloyal; that I have given aid and comfort, counsel and encouragement, to rebels in arms; and that I have violated my oaths as a judicial officer of the State of Kentucky by so doing. To each of these charges, in substance the same, I simply state now in reply, as I authorized a member from New York (Mr. Brooks) to state on the floor of the House, that, in form and in substance, in spirit and in intent, they are malicious and false from beginning to end.

So, also, the charges set forth in the fourth, fifth, and sixth specifications or "reasons:" that I advised the recruiting of men to fight against, or advocated resistance to, the federal government; that I joined the rebel army and was a candidate for colonel of a regiment in said army, or for any other office; that I aided bands of rebel soldiers in capturing Union citizens and soldiers, and that I gave them aid, are equally false, unfounded, and malicious.

It is true, as alleged in the seventh "reason," that, in 1861, I voted for John S. Williams to represent his district in the Congress of the United States, and for Dr. Parish to represent his county in the Kentucky legislature, as I had a constitutional right to do; but it is not true, so far as I know or believe, that either Williams or Parish, in that canvass, discussed or expressed any opinion as to the right of a State to secede from the Union, and I submit that it is not proper to hold me responsible for their subsequent conduct. I have already denied above the allegation which is here again made, that I went into the rebel army, and I now deny, as is further charged, that I ever fled to Canada to avoid obedience to any order of the United States military authorities in Kentucky.

The only notice I think it proper to take of the eighth and tenth charges is to say that they are wholly and entirely false.



As for the ninth "reason" for excluding me from holding a seat in the House, I deem it necessary only to say that I can conscientiously take the oath required by law for the admission of a member, and that I am ready and willing to do so; and whatever might be my own or the opinions of others as to its constitutionality, I would regard it as obligatory and binding upon me until repealed or set aside by competent authority. The slur upon the democratic party of Kentucky I consider unworthy of notice, and it could only have proceeded from a heart abounding in malice and uncharitableness.

In reply to the closing paragraph in the paper of Samuel McKee, that he can prove the specifications set forth, if he does it will be by perjured witnesses.

I feel the more fully warranted in thus presenting the facts in my case, as by the action of the House in adopting the resolution (of Hon. John A. Logan, of Illinois) my colleagues and myself are denied our seats pending the "report of the committee," and we are not aware of any standing rule that admits us to the privilege of the floor as members-elect—the rule on that subject being applicable to members of a future Congress; while, by the adoption of another resolution, contestants from the State of Kentucky are admitted to the floor; thus presenting the singular spectacle of closing the doors to those holding the regular credentials of members, and extending privileges denied them to contestants.

Respectfully,

JOHN D. YOUNG.

---

[SECOND REPORT.]

KENTUCKY MEMBERS OF CONGRESS.

December 3, 1867.—Mr. Cook, from the Committee of Elections, made the following report:

*The Committee of Elections, to which were referred the credentials of Lawrence S. Trimble, John Young Brown, J. Proctor Knott, A. P. Grover, Thomas L. Jones, James B. Beck, and John D. Young, seven of the persons who claim to have been elected representatives from the State of Kentucky in the fortieth Congress of the United States, with instructions to report whether they or either of them are disqualified from sitting as members of this House, on account of their having been guilty of acts of disloyalty to the government of the United States, or having given aid and comfort to its enemies, respectfully report that, in pursuance of the order of the House passed July 8, 1867, it has made a full investigation of the questions referred, and the testimony taken by its sub-committee is herewith submitted.*

The importance and gravity of the questions upon which the committee has been called to act, and the fact that in relation to those questions there are no precedents by which it might be guided in arriving at correct conclusions, have seemed to require that the committee should lay before the House the principles which have determined the character and result of its investigations and deliberations so far as such result has yet been reached.

Before the adoption of the resolution of the 8th July, 1867, under which this committee has been acting, the credentials of the gentlemen above named, together with the protest of James B. Beck, A. P. Grover, and Thomas L. Jones, and also a motion that the committee be discharged from the further consideration of the credentials of Messrs. Grover and Beck, had been referred to this committee, and it had made a report thereon, in which report is the following expression of its opinion: The committee is of opinion that no person who has been engaged in armed hostility to the government of the United States, or who has given aid and comfort to its enemies during the late rebellion, ought to be permitted to be sworn as a member of this House, and that any specific



and apparently well-grounded charge of personal disloyalty made against a person claiming a seat as a member of this House ought to be investigated and reported upon before such person is permitted to take the seat; but all charges touching the disloyalty of a constituency in a State in which loyal civil government was not overthrown during the late rebellion, or the illegality of an election, are matters which pertain to a contest in the ordinary way, and should not prevent a person holding a regular certificate from taking his seat.

The committee adhere to the views expressed in that report, that no man who has been engaged in an attempt to overthrow the government and subvert the Constitution by force of arms, or who has voluntarily given aid, countenance, counsel, or encouragement to persons so engaged, ought to be admitted to a seat in this House to make laws for the nation he has traitorously sought to destroy, and it is apparent that there must be power in this House to prevent this, the House being the judge of the qualifications of its members, of which fidelity to the Constitution is one, and that this end can only be certainly accomplished by the investigation of any specific and apparently well-grounded charge of personal disloyalty made against a person claiming a seat as a member of this House, before such person is permitted to take the seat.

The House concurred in this view of the committee, by adopting the resolution under which the committee is now acting. The principle upon which this preliminary investigation was ordered was adopted by Congress when the oath of office to be taken by members of this House was prescribed by law, and the preliminary investigation of specific and apparently well-founded charges against a person claiming a seat in this House is only an additional mode of attaining the same result sought to be secured by requiring the oath to be taken by all persons who become members of the House. The same principle has been affirmed by the President of the United States in his annual message, December 4, 1866, in which he says:

In the admission of senators and representatives from all of the States, there can be no just ground of apprehension that persons who are disloyal will be clothed with the powers of legislation, for this could not happen when the Constitution and the laws are enforced by a vigilant and faithful Congress; each House is made the judge of the election, qualifications, and returns of its own members, and may, with the concurrence of two-thirds, expel a member. When a senator or representative presents his certificate of election, he may at once be admitted or rejected; or, should there be any question as to his eligibility, his credentials may be referred for investigation to the appropriate committee. If admitted to a seat, it must be upon evidence satisfactory to the House of which he thus becomes a member, that he possesses the requisite constitutional and legal qualifications. If refused admission as a member, for want of due allegiance to the government, and returned to his constituents, they are admonished that none but persons loyal to the United States will be allowed a voice in the legislative councils of the nation, and the political power and moral influence of Congress are thus effectively exerted in the interest of loyalty to the government of the United States and fidelity to the Union.

Whether at some future time provisions should be made by law by which those persons who have been at one time guilty of acts of disloyalty, but have by their subsequent conduct given conclusive evidence of loyalty, attachment to the government, and obedience to the Constitution and laws, should be permitted to take seats in this House, is a matter which addresses itself to the considerate judgment of Congress, but upon which the committee is not now called upon to express an opinion. But while the committee entertained no doubt that it is the right and duty of this House to turn back from its very threshold every one seeking to enter who has been engaged in armed hostility to the government of the United States, or has given aid and comfort to its



enemies during the late rebellion, yet we believe that in our government the right of representation is so sacred that no man who has been duly elected by the legal voters of his district should be refused his seat upon the ground of his personal disloyalty, unless it is proved that he has been guilty of such open acts of disloyalty that he cannot honestly and truly take the oath prescribed by the act of July 2, 1862; and further, that the commission of such acts of disloyalty to the government should not be suspected merely, but should be proved by clear and satisfactory testimony, and that while mere want of active support of the government or a passive sympathy with the rebellion are not sufficient to exclude a person regularly elected from taking his seat in the House, yet whenever it is shown by proof that the claimant has by act or speech given aid or countenance to the rebellion, he should not be permitted to take the oath, and such acts or speech need not be such as to constitute treason technically, but must have been so overt and public, and must have been done or said under such circumstances, as fairly to show that they were actually designed to, and in their nature tended to, forward the cause of the rebellion. In obedience to the resolution of this House of July 8, 1867, acting upon the views herein expressed, your committee sent a sub-committee to the State of Kentucky, and carefully examined all the evidence which they could procure upon the question referred to them, and upon an examination of the evidence they find that it is not proved that either James B. Beck, Thomas L. Jones, A. P. Grover, or J. Proctor Knott have been engaged in armed hostility to the government of the United States, or have given aid and comfort to its enemies, during the late rebellion, and they therefore recommend that they be permitted to be sworn as members of this House. In relation to the case of Lawrence S. Trimble, John D. Young, and John Young Brown, the committee reports that the seat of each of these gentlemen is contested, and that in each case the contestants have made the point that the person holding the certificate of election had been guilty of direct acts of disloyalty to the government, and evidence has been taken both by the claimants and contestants, in addition to that taken by the committee, upon that question, which evidence the committee has not yet had time to consider, and is not now prepared to report any conclusion in those cases. The committee believes that it will be able to report in those cases within a short time, as the cases are understood to be ready for a final hearing.

The committee recommends the adoption of the following resolution:

*Resolved*, That James B. Beck, Thomas L. Jones, A. P. Grover, and J. Proctor Knott are entitled to seats as members of this House from the State of Kentucky.

---

#### G. G. SYMES vs. L. S. TRIMBLE.

The report was agreed to, *nem. con.*, July 10.

January 7, 1868.—Mr. Upson, from the Committee of Elections, made the following report:

*The Committee of Elections, to which were referred the credentials of Lawrence S. Trimble, claiming to have been elected a representative from the first congressional district of Kentucky, and the memorial and papers in the case of G. G. Symes, contesting the right of said Trimble to his seat, and claiming that he is entitled to the same, submits the following report:*

By a resolution of this House, passed July 8, 1867, your committee



was, among other things, instructed to inquire and report whether the said Lawrence S. Trimble was "disqualified from sitting as a member of this House on account of having been guilty of acts of disloyalty to the government of the United States, or having given aid and comfort to its enemies;" and in pursuance of said resolution testimony was taken in this case, as well as other cases therein embraced, which evidence, on the 3d of December, 1867, was reported to this House.

The right of the said Trimble to his seat was also contested by G. G. Symes, who likewise claimed to have been elected thereto as the representative from said district; and one of the points made by the contestant in his allegations was that the said Trimble was "guilty of overt acts of disloyalty and treason to the government of the United States during the late rebellion, and gave aid and comfort to the rebels by supplying them with medicine, commissary, and quartermasters' stores, to enable them to prosecute the war, and yourself entered their lines and countenanced, aided, and abetted their rebellion." As the whole investigation and contest depends chiefly, if not wholly, on this charge of direct acts of disloyalty as disqualifying Mr Trimble from sitting as a member of this House, and as the evidence taken under the aforesaid resolution of the House, and under the notice of contest, relates chiefly to this charge, the committee thought proper to consider the evidence taken under the resolution and under the notice of contest together, and to embody its conclusions in one final report.

Adhering to the rule laid down by the committee in its report made to this House December 3, 1867, in the cases from Kentucky of Beck, Jones, Grover, and Knott, (report No. 2 of this session,) which was subsequently approved by the House, the committee, having considered the whole testimony, does not find that it has been "proved by clear and satisfactory testimony" that the said Lawrence S. Trimble "has been guilty of such open acts of disloyalty that he cannot honestly and truly take the oath prescribed by the act of July 2, 1862," nor does it find the allegations of contestant sustained by the proof.

The evidence in this case, taken by the committee under the resolution of the House of July, 1867, will be found in Mis. Doc. No. 47, first session, fortieth Congress, pages 112 to 134, inclusive, and that taken under the notice of contest in Mis. Doc. No 14 of this session.

The principal witnesses relied upon by contestant to show acts of disloyalty on the part of Mr. Trimble are Bolinger and Ellithorpe, in said Mis. Doc. No. 47, and Hall, Landrum, Anderson, Duke, and Campbell, in said Mis. Doc. No. 14, and their evidence relates principally to an alleged contraband trade with rebels, or with persons living in districts within the rebellion or on the borders of such districts, and mostly in the summer of 1861, before the lines between the Union and rebel occupancy had become very definitely or distinctly marked or determined. It is sought to connect Mr. Trimble with it by his alleged admissions, and by the fact that he was in partnership with certain persons, or a member of a certain firm claimed to have been engaged in such trade, although it appears that during most of the time of the alleged contraband trade he was absent from the district on account of the rebel hostility to him. The testimony is, however, very vague, general and unsatisfactory, much of it being also hearsay, or founded on the judgment of the witnesses, or rumor, or general repute—not competent, or, if competent, not very safe or reliable testimony upon which to make out a charge of a criminal nature against any accused person; and even if certain members of a firm or partnership were clearly shown to have been engaged in contraband trade or treasonable acts, it would hardly be



deemed conclusive evidence against the other partners on a criminal charge unless they were shown to have voluntarily and knowingly participated in the alleged criminal act.

But in regard to the alleged partnership and contraband trade, and the charge of aiding and assisting the rebellion, all the material portions of the testimony of the witnesses relating to these points, brought forward against Mr. Trimble, are directly contradicted or fully explained so as to clearly acquit him of the criminality alleged against him by the testimony of Craig, Hart, Nolen, Boyd and Flournoy, (Mis. Doc. No. 14,) witnesses adduced by him in his defense under the notice of contest, and by the testimony of Given, Thornbury, Conley, and Williams, (Mis. Doc. No. 47,) witnesses produced by him on the investigation before the committee. In fact, Ellithorpe himself, the principal witness against Trimble, and the active man in the trade transactions alleged to have been contraband and criminal, denies (page 123, Mis. Doc. No. 47) that he intended to embark in contraband trade, and voluntarily adds that it is fair for the committee to presume that the other alleged partners (among whom he includes Trimble) had no such intention.

The firm of L. S. Ellithorpe & Co., referred to by said W. F. Ellithorpe in his testimony, and also by Bolinger, is shown by the testimony of Flournoy (pages 41, 42, 43, and 48, Mis. Doc. No. 14) to have been totally separate and distinct from that of Flournoy, Trimble & Co., referred to by said Ellithorpe (page 119, Mis. Doc. No. 47) as identical; and the trade transactions on the borders of Tennessee, referred to by W. F. Ellithorpe, appear by Flournoy's testimony to have been almost wholly connected with the prosecution and completion of a contract made by L. S. Ellithorpe & Co. with the Mobile and Ohio Railroad Company for the construction by said L. S. Ellithorpe & Co. of a line of railroad to connect the Mobile and Ohio railroad with the New Orleans and Ohio railroad.

Supplies were procured by the firm of L. S. Ellithorpe & Co. for their laborers during the progress of the work, and to enable them to complete their contracts, and they procured them where they saw fit; but Mr. Trimble, or the firm of Flournoy, Trimble & Co., according to the testimony of Mr. Flournoy, (pages 42, 43, 48, Mis. Doc. No. 14,) had nothing to do with these supplies, and had no interest in anywise in them, and during nearly the whole term of the existence of the firm of Flournoy, Trimble & Co. Mr. Trimble, it appears, was absent from Paducah, on account of the hostility of the rebel element in that part of Kentucky to him personally, he having been the Union candidate for Congress in that district that year (1861) in opposition to the secession candidate, Mr. Burnett.

It would also seem, notwithstanding the statements made to the contrary elsewhere in Ellithorpe's testimony, that he himself virtually admits (page 121, Mis. Doc. No. 47) that the firm of L. S. Ellithorpe & Co. bought goods or supplies for themselves on their own account as railroad contractors, and used what they needed in their said business, and disposed of any surplus of their purchases to others as they saw fit, Ellithorpe claiming that for this balance or surplus the said firm returned the proceeds to Flournoy, Trimble & Co., as though sold for them, and in this way seeking to make Trimble responsible criminally for the disposition L. S. Ellithorpe & Co. made of these supplies, which he (W. F. Ellithorpe) says they purchased of Flournoy, Trimble & Co.

It also appears by the testimony of Flournoy (pages 42 and 43, Mis. Doc. No. 14) that while L. S. Ellithorpe & Co. were at work on the railroad in Tennessee the United States authorities permitted supplies to



be shipped from Cairo to them in Tennessee, (General Prentiss being then in command at Cairo,) said authorities desiring the railroad to be finished, supposing it would be of some in use army movements. To sell Ellithorpe & Co. such supplies at that time, under the circumstances, could hardly be considered illegal, much less criminal; and if Ellithorpe & Co. purchased more than they needed on their railroad contract, and afterward sold the surplus to the enemy for purposes of gain or otherwise, they are the wrong-doers, and not necessarily the persons from whom they purchased or obtained them.

It is also in evidence that subsequent to these alleged illegal transactions, in September, 1861, and after some charges had been made against Mr. Trimble in relation thereto, an investigation was had under the supervision of the Treasury Department, and he was exonerated therefrom, and thereupon he was appointed by the Treasury Department one of the Board of Trade at Paducah, and acted in that capacity, so far as appears, to the satisfaction of the department.

From the evidence in regard to speeches made by Mr. Trimble, it appears that in 1861 he was the Union candidate for Congress against Burnett, and made Union speeches in that canvass throughout the district. After the emancipation proclamation of President Lincoln was issued, he, in common with many of the originally professed Union men of Kentucky, opposed Mr. Lincoln's administration and the policy of the war, charging that it was waged as an abolition war, and asserting that he was opposed to voting any more men or money to aid in carrying it on; but it is evident from the whole testimony that his opposition was expressed in language similar to that made use of by the opponents of the administration about that time on the floor of Congress, the propriety or tendency of which, under the circumstances, it is perhaps unnecessary to discuss here.

Kentucky having had many of her citizens engaged in the rebellion, and others strongly sympathizing with them who remained at home, and having since the surrender of the rebel armies permitted, by law, all returned rebels to vote who are in other respects qualified, it is evident that avowed sympathy with the rebellion does not at present detract from the popularity of a candidate for official position in that State, but rather conduces to his success, and this fact may have somewhat stimulated some candidates in their efforts, and intensified their expressions before their constituents. In this case, however, Mr. Trimble having been the outspoken Union candidate for Congress in 1861 against secession, having by authority of the Treasury Department, in September of the same year, served as one of the Board of Trade at Paducah, and having also been elected and having served as a representative from his district in the thirty-ninth Congress, his seat uncontested and his loyalty unquestioned, your committee, taking into consideration all the testimony, finds no case made out under the charges against him disqualifying him from taking his seat or disproving his election as a representative to this Congress from his district.

The committee recommends the adoption of the following resolutions:

*Resolved*, That G. G. Symes is not entitled to a seat in this House as a representative from the first congressional district in Kentucky.

*Resolved*, That the oath of office be now administered to Lawrence S. Trimble, and that he be admitted to a seat in this House as a representative from the first congressional district in Kentucky.



## [FIRST REPORT.]

## SWITZLER vs. ANDERSON.

The secretary of state went behind the returns of the county clerks and rejected the vote of a county. Held to be illegal.

Minority report held that such a state of intimidation existed in the county that a legal registration was impossible.

The House recommitted the case with instructions to investigate charges of disloyalty against the contestant.

At the third session the committee again reported in favor of the contestant, but the House rejected the report by the following vote, (January 21, 1869:) yeas, 40; nays, 89; and the sitting member retained the seat.

March 23, 1868.—Mr. Poland, from the Committee of Elections, made the following report:

*The Committee of Elections, to which was referred the memorial of William F. Switzler, claiming to be entitled to the seat now occupied by George W. Anderson, as representative from the ninth congressional district of Missouri, and the evidence in support thereof, and in opposition thereto, having considered the same, submits the following report:*

The ninth congressional district in Missouri comprises ten counties. At the election held on the 6th of November, 1866, for member of Congress, in all the counties of the district except the county of Callaway, George W. Anderson received 4,876 votes, and William F. Switzler received 4,698, making a majority for Anderson of 178 votes.

The county of Callaway gave Anderson 163 votes and Switzler 1,463 votes. If the vote of this county had been added to the others Switzler would have been elected by a majority of 1,122 votes over Anderson.

The secretary of state, who, by the law of Missouri, is to open the returns and cast up the votes given for members of Congress, refused to open and cast up the votes given in the county of Callaway, upon the ground that there had not been a proper registration in that county, but opened and cast up the votes given in the other counties in the district; and as Anderson had a majority of the votes given in those counties, the secretary of state gave Anderson the certificate of election.

The contest in this case turns wholly upon whether the vote of the county of Callaway should be counted.

The vote of Callaway County was duly certified by the clerk of the county to the secretary of state, as the law of that State requires; and the only objection to its being counted rests upon the allegation that the registration law of the State was so wholly disregarded that the registration of the voters should be held a nullity.

In order to make a proper use of the facts found by the committee from the evidence in this case, it is necessary to make a brief synopsis of the registry law of the State of Missouri:

The governor of the State is to appoint a supervisor of registration in each county, who is also the president of the board of appeals and revision. The supervisor of registration in each county is to appoint an officer of registration in each election district. The officers of registration in each election district are required to attend on certain days prior to each general election for the purpose of registering the voters of such district. Every person applying to such officer of registration to be registered as a voter must first take and subscribe the test oath pre-



scribed by the constitution of that State. Such officers of registration are also empowered to examine, on oath, every person applying for registration, and it is made their duty to diligently inquire and ascertain that such person has not been guilty of any of the disqualifying acts specified in the constitution. Such officers may also take other evidence as to the qualifications of the applicants, and also act upon their own knowledge. If he is satisfied that the applicant is duly qualified, and can honestly and truthfully take the test oath of the constitution, then he registers such person as a qualified voter. If the officer is not satisfied that the applicant is qualified, he is to enter his name upon a separate list of persons rejected as voters, and he is also to enter the grounds of the rejection, and note an appeal, if one be taken.

The superintendent of registration and the several district officers of registration constitute a board of registration, and are required to meet on certain days prior to the election, to hear appeals from the several district registrars, and generally to revise the registration in the several election districts in the county, and act upon objections to any who may have been registered as accepted voters.

After this action by the board of revision each district registrar is required to make out and certify two copies of the revised registration of his district, and deliver one to the clerk of the county court, and one to the election judges of the district. No person is allowed to vote as "a qualified voter" unless his name appears as such upon the certified copy thus furnished the judges of the election.

All these provisions of the law in relation to the duties of registration and election officers are enforced by severe penalties for their violation; and all attempts to impede registration by threats, intimidation, or violence are similarly punishable.

By a supplemental registration act it is provided that the supervisors of registration in the several counties shall "make out and forward to the secretary of state, immediately after the completion of the registration in their respective counties and districts, a certified copy of the registration thereof, which shall contain the names of all registered voters; which certified copy shall be evidence of the facts therein stated, and may be used as such in any contested election case, or other legal proceedings."

The governor of Missouri duly appointed Thomas Ansell to be superintendent of registration for the county of Callaway, and upon his death appointed William H. Thomas to the same office. Ansell appointed all the district or township registrars for the county except two, who were appointed by Thomas. The township registrars were: Isaac D. Snedcor, for Fulton Township; John Vinson, for Nine-mile Prairie Township; Franklin Burt, for Liberty Township; A. B. Maupin, for Round Prairie Township; James E. Turley, for Bourbon Township; John Yount, for Cedar Township; Thomas J. Ferguson, for Cote Sansdessein Township; G. A. Moore, for St. Aubert Township; and L. B. Hunt, for Auxvasse Township.

These township or district registrars proceeded at the proper time to make the registration in their several districts, and they all, with the superintendent, met as a board of appeals and revision to correct and revise the registration for the county. After this had been done each district officer of registration certified the registration for his district in the following form:

I, Isaac D. Snedcor, officer of registration in and for the first election district in and for the county of Callaway and State of Missouri, do hereby certify that the foregoing list of registered voters is a true and perfect copy of the register of qualified voters in



said election district, as ascertained and determined by the board of appeals and revision sitting for that purpose in and for said county.

Given under my hand this 27th day of October, A. D. 1866.

ISAAC D. SNEDICOR,  
*Officer of Registration.*

The certificates of all the other registrars were in the same form as the one above copied.

Copies of this registration were duly delivered to the clerk of the county court and the judges of the several election districts, as the law requires.

The election for members of Congress was held on the 6th day of November, 1866.

Thomas, the superintendent of registration for Callaway County, did not certify or return the registration of that county to the secretary of state until the 12th day of December, 1866, more than five weeks subsequent to the election.

The copy of the registration which he then returned to the secretary of state had attached to the registration of each township the certificate of the township registrar, as stated above.

Thomas himself attached a certificate in the following words:

I hereby certify that the above and foregoing list of registration is a correct copy as furnished me by the officers of registration for the various election districts in and for Callaway County, Missouri. And I hereby further certify that the registration law in its letter and spirit was not carried out in any one of the election districts of said county; that such a system of intimidation and threatening was carried on by the disloyal and those opposed to the law as to deter loyal men from undertaking the registration in most of the election districts, and was consequently intrusted to men who most shamefully disregarded the law. In the few districts where men could be had who were willing to register according to law, there was such intimidation and threatening used as to deter those who were willing to make objections to those they knew not to be entitled to registration as qualified voters, and as a consequence the law could not and was not carried out, as the certificates hereto appended show.

Given under my hand this December 12, 1866.

WILLIAM H. THOMAS,  
*Superintendent of Registration for Callaway County, Missouri.*

Following the certificate of Thomas were the certificates of H. S. Turner, James E. Turley, and John Yount, as follows:

I hereby certify that I was appointed officer of registration for Round Prairie Township, Callaway County, Missouri, by Thomas Ansell; that in entering upon the duties of the office I found much stubbornness manifested. The people who made application for registration as qualified voters refused to be examined as to qualifications; and from the danger that would arise from an attempt on my part to issue compulsory process for witnesses, every one of whom were afraid to volunteer objections to persons registering &c., I would be entirely unable to carry out the law in my district, and therefore resigned my office. I am clearly of opinion that not one-fourth of the number registered as qualified voters in the county are legal voters according to law.

H. S. TURNER.

FULTON, MISSOURI, December 1, 1866.

I hereby certify that I was appointed by Thomas Ansell as officer of registration for Bourbon Township, Callaway County, Missouri; that I entered upon my duties in compliance with the law; and that men who had been reported as the worst rebels in my district made application for registration, and took the prescribed oath; that in no case was any objection made, and personally not knowing any acts of disloyalty that would debar them from registration as qualified voters, I felt bound under the law to register them as such. I am certain that the few loyal men of my district were afraid to make objections to persons who they knew were not entitled to registration as qualified voters, and I fully believe it would have been dangerous for them to have done so. I firmly believe that a great majority of those registered by me as qualified voters have been and are disloyal. I judge this from the little respect they had for federal soldiers, the little interest they took in giving information to the Union officers during the war, and their contempt generally for the Union men of the county.

JAMES E. TURLEY,  
*Officer of Registration.*



I hereby certify that I was appointed by Thomas Ansell as registrar of Cedar Township, Callaway County, Missouri; that I entered upon the discharge of my duties according to law, and rejected all persons whom I knew from my own personal knowledge to be disqualified. Many persons who were registered by me as qualified voters were reported to me by various witnesses as being guilty of many acts of disloyalty; but said witnesses informed me that if they were to come before me and testify to the facts they would be compelled to leave their homes, and rather than do so, even under compulsory process, they would get out of the way. Knowing this, I thought it useless to attempt to forcibly bring them before me, knowing also that such a proceeding would endanger their lives. Many good Union men informed me that, on account of the threats and intimidation used against them, they thought it unsafe to go to the place of registration and voting, and did not do so. From what I know and have seen since the passage of the registry law I am fully convinced that there could not be a legal registration made in Callaway County under the circumstances as they existed at the time of the present registration.

Given under my hand this December 8, 1866.

JOHN YOUNT.

Before returning said copy of registration to the secretary of state, Thomas made entries upon it against the names of many of the persons registered as qualified voters. The following are the entries made upon the first page of the register for Fulton Township:

Agee, James H., enrolled disloyal in 1862.  
 Allen, James G., enrolled disloyal in 1862.  
 Atkinson, C. O., enrolled disloyal in 1862; required to take the oath of allegiance.  
 Atkinson, J. A., required to take oath of allegiance.  
 Bailey, William H., disloyal, rebel sympathizer; refused to take convention oath as clerk of court; now county clerk elect.  
 Barnes, T. S., enrolled disloyal.  
 Bartley, Joseph D., has been in rebel or bushwhacking service; registered in Fulton; lives in St. Aubert.  
 Basket, Martin, enrolled disloyal.  
 Beavan, Charles, enrolled disloyal.  
 Beavan, John T., enrolled disloyal.  
 Becker, Engel, enrolled disloyal.  
 Beeding, Thomas H., enrolled disloyal; registered in Fulton; lives in Round Prairie.  
 Bellama, George W., enrolled disloyal.  
 Bennett, Willis D., enrolled disloyal; required to give bond of \$1,000.  
 Berry, John G., enrolled disloyal.  
 Berry, Samuel H., influential rebel sympathizer.  
 Blackamon, James, been in rebel army. (H. S. Turner, witness.)  
 Blackamon, James A., rebel sympathizer, notoriously disloyal. (H. S. Turner, witness.)  
 Blackburn, Thomas, enrolled disloyal; under bond of \$2,000; stated on oath he could not take the oath as juror at circuit court.  
 Blagg, William D., enrolled disloyal; took Judge Ansell's two horses in 1861; said they were for Porter.

Entries of a similar character were made against the names of seven hundred and thirty persons who had been duly registered as qualified voters in Callaway County. The whole number registered in that county as qualified voters was two thousand and thirty-four.

Upon these facts the question is presented, whether the secretary of state had any legal right to refuse to cast up the votes given in the county of Callaway.

It does not distinctly appear that the secretary of state knew that these entries on the copy of registration had been placed there by Thomas, but it seems highly probable that he did, as it does appear that before Thomas made any certificate upon the registration, it was a matter of consultation and discussion between him and the secretary whether he could make such certificate as he did make, and the effect of it; the secretary saying that if Thomas could make such a certificate, he thought it probable the whole thing could be thrown out.

Thomas had no legal right to make any such entries upon the copy; it was not in the performance of any legal duty that the laws of the



State devolved upon him; his duty was only to make out and deliver to the secretary of state a copy of the registration of the county, containing the names of all registered voters, and to verify it by his official certificate. He had no right to interpolate other facts or statements into the copy, and he had no power to make his certificate evidence to any greater extent than to verify the copy as a true copy of the official registration. But assuming that the secretary of state did not know that these entries on the registration had been made by Thomas, and that he supposed they were made by the district registrars, or were made by the board of appeals, still, in the judgment of the committee, he had no right to regard them, and upon them set aside the vote of the county. The copy of registration shows that each of the persons against whose name such entry had been made was registered as a qualified voter, and that such registration had been sanctioned and approved by the board of appeals. If he had the right to suppose that they had this evidence before them, or that such charge was made against these persons, he must also see that notwithstanding, this they had been allowed to remain upon the register as qualified voters. The law nowhere authorizes the secretary of state to review the action of the registration officers and overrule their action. But it is not necessary to enlarge upon this view of the case, as the committee is satisfied that the secretary knew that these entries were made by Thomas with a view to support what he stated in his certificate, and that he ought to have treated them as a mere nullity, as much as if Thomas had entered against the same persons that they were minors or non-residents.

Nor had the secretary any right to regard the facts stated by Thomas in his certificate, except so much as verified the copy. The law is entirely settled that statute-certifying officers can only make their certificates evidence of the facts which the statute requires them to certify; that when they undertake to go beyond this and certify other facts, they are *unofficial*, and no more evidence than the statement of any *unofficial* person. The statements or certificates of Turner, Turley, and Yount cannot be regarded as having any legal validity whatever. The district registrars had exhausted their legal power of certifying when they had certified the registration of their respective districts; they were not officers to certify the county registration to the secretary of state, so that their statements are of no more force than any private persons. The law is equally clear that the secretary of state had no legal power to go behind the returns that were certified to him by the county clerks of the votes in the respective counties, or behind the returns of the registration officers. He was a mere canvassing officer, to open and count the votes that upon the face of the returns appeared to have been regularly cast.

The committee therefore regards the action of the secretary of state in rejecting the vote of Callaway County as wholly illegal and unauthorized; and that he should have counted the vote of that county, and have given the certificate of election to Switzler, the contestant, so that the position of the parties to this contest should have been reversed.

The sitting member, Anderson, claims that the registration law of the State was so entirely disregarded in making the registration of the county of Callaway that the vote of that county ought not to be counted, and that if the secretary of state, as a canvassing officer, had no right to reject the vote of that county, that this House, upon the evidence introduced, should do so.

This claim is founded partly upon the ground that the district officers of registration voluntarily neglected their duty and the requirements



of the law, but mainly on the ground that the public and general sentiments of the people were so hostile to the proper enforcement of the registry law, and that such open threats were made against those who should attempt it, that not only were the registrars intimidated and prevented from doing their duty, but that loyal men were thus prevented from interposing objections against the registration of their disloyal neighbors.

It is claimed that this public sentiment was so general, and the fear and intimidation created by threats publicly made so great and overwhelming, that the registration was merely formal, and that therefore all who chose to register were allowed to do so, without regard to their disloyal sentiment or disloyal actions.

We proceed to consider the evidence upon this subject, to see if this claim is supported by the facts proved.

The only evidence introduced for the purpose of showing a disregard of the provisions of the law by any of the district registrars is that of William H. Thomas, as to the registration in Fulton Township, of which J. D. Snedikor was registrar, and appointed by Thomas.

Thomas testifies that he was present and saw Snedikor register a number of persons. He says:

I thought his whole movements were contrary to law, in this, that he subscribed the names of the applicants instead of their subscribing their own names, as the law directs; and that he merely asked them if they could take the oath, instead of administering it; and that he totally failed to administer the additional oath given under the Attorney General's instructions, by which to ascertain the true qualifications of applicants. I protested against the proceeding as being illegal, became disgusted, and left the office.

Thomas also testifies that he furnished all the registrars with a list of names of persons who were enrolled by the military authorities as disloyal; and in answer to a question whether any of such persons were registered by Snedikor, he answers, "As well as I can recollect he enrolled about two hundred such, as the books will show—perhaps more, perhaps less."

Thomas was also asked, "Did he (Snedikor) enroll persons as qualified voters who were disqualified from other causes?—Answer. I think he did a great many. I know of many persons who had advocated the southern cause, who had given aid and countenance to the rebellion, who were not enrolled as disloyal, whom he registered as qualified voters. I think the law clearly disfranchises all such. I know of others who were wounded in battle, or were in the confederate service, or some skirmish or fight against federal troops, at various times and places, since the beginning of the war, whom he enrolled as qualified voters."

On the other side, Snedikor, the registrar of Fulton, testifies, "there was no person registered who did not take the oath. There were about twenty-five, not exceeding twenty-five, of the first who registered, that I explained to them the oath, and asked them if they took the oath, and upon being answered that they did, I then had them subscribe their names. All of the rest of them I had hold up their right hands while I read the oath to them, after which they subscribed to it." He also testifies that he did not register any person whom he knew to be disqualified under the law, and he also says that the certificate of Thomas, so far as it applies to Fulton Township, is false.

There is certainly some ground to doubt the truthfulness of Thomas, both in his certificate and in his testimony, from the fact that he presided in the board of appeals and revision, by whom the registration in Fulton, as well as the residue of the county, was approved and confirmed, and, so far as the evidence goes, without making any objection to its propriety. This fact, together with the delay in certifying the registra-



tion till long after the election, and his conduct in reference to it there, cannot fail to excite some suspicion that he was influenced by the fact that the rejection of the vote of this county would change the result of the election in favor of his political friend.

John Yount, the registrar of Cedar Township, whose name is signed to the statement or certificate heretofore recited, was called as a witness. He says that he was not threatened in any way except with lawsuits; that some men told him that if he did not register without asking so many questions he would be sued. He says that when he signed the certificate of his registration he believed it to be true, and that he still believes it to be true, except ten or fifteen names.

James E. Turley, the registrar of Bourbon Township, whose statement or certificate to the secretary of state has before been referred to, was called as a witness by the sitting member, and was asked as follows:

Question. In signing the certificate to your registration for Bourbon Township, did you believe that the law was faithfully carried out?—Answer. I did then, sir, and if I had to do it again would do just as I did then; but I heard, after I signed the certificate, things which, if I had known when I registered, I would not have signed the certificate.

Q. Was there not a system of intimidation in the county at the time?—A. There was, against me, sir. I was intimidated by fear of being interrupted.

On his cross-examination by the contestant, he was examined as to the grounds of his fear, and what was said, and by whom, and as he is the only one of the registrars who claims to have been prevented by fear from doing his proper duty, his testimony on that subject is quoted:

Question. What did the people say that scared you?—Answer. When you (the contestant) spoke in the court-house, you asked if the supervisor was present, and when told that he was not, you then asked if any registrars were present, and he told them that we were in a very delicate situation, and to be careful.

Q. What other persons said anything to scare you?—A. James K. Sheely made another very frightful remark to me.

Q. When and where did Sheely make the remark, and what was it?—A. It was after I was appointed, in front of his office, in Fulton. He said if this registration law was carried out according to radical rule, there would be five hundred lawsuits in Callaway County.

Q. Didn't you carry out the registration according to the radical rule?—A. I don't think I did, as I had to skin between two parties, as it was rather a zigzag course, liable to a suit from either party.

Q. Were there any suits brought against you?—A. Not that I know of.

Q. What other persons scared you by remarks?—A. Jeff. Jones made remarks in a speech here that scared me.

Q. What did Jones say?—A. Jones advised the people, soldiers and all, to open polls of their own, and hold an election in spite of the registration.

Q. Was not Jones's advice not to resist the registration law?—A. I did not so understand it; but he advised them not to register at all, but to hold polls of their own at the election.

Q. What other persons made frightful remarks to scare you?—A. Well, sir, I'll take Mr. Hockaday as the next man, as he struck more terror to my heart than anybody else. Mr. Hockaday got up the day Mr. Jones spoke, and read a document, one clause of which was that "we will put down the radical party so that they will never destroy any other nation as they have done this."

Q. Was not that document a resolution ratifying the action of the Philadelphia convention?—A. I don't know.

Q. What other persons frightened you?—A. It was M. Y. Duncan, of Audrain County.

Q. What did he say?—A. He said pretty much what you said; only he went further, and said that if any man came forward and took the oath of loyalty, and the registrar refused to register him, he was liable to prosecution.

Q. Are these all that scared you?—A. These are all the important ones; there was some neighborhood chat of minor importance.

H. S. Turner, whose certificate to the secretary of state has been quoted, was appointed registrar for Round Prairie Township, and after registering one day resigned the position. He was asked:

Question. What were your reasons for so doing? (resigning.)—A. I found I could not execute the law properly.



Q. What were the difficulties you had to contend with?—A. A great many refused to be questioned as to their qualifications.

Q. Those whom you registered, did they refuse to be questioned?—A. A good many did, sir.

Q. Did you believe, from your knowledge of the township at the time, that a proper registration could be made under the law?—A. I did not, sir.

Q. Were persons whom you knew to be disqualified demanding to be put on the list as voters?—A. Yes, sir.

The above is all the direct evidence on the part of the sitting member tending to show that there was any neglect of duty on the part of the district registrars, or to show that they were overawed by fear in the performance of their duty.

The contestant called and examined of the district registrars, John Vinson, A. B. Maupin, Thomas J. Furguson, L. B. Hunt, George A. Moore, and J. D. Snedcor, all of whom swear, in substance, that the registration was entirely quiet and peaceful; that they were not in any manner interfered with or intimidated by any threats, and that they faithfully pursued the law in making the registration.

Several witnesses on the part of the contestant testify that all these district registrars are men of upright character, and that they were all truly loyal to the government of the United States during the late rebellion, and this evidence is not controverted by any evidence on the part of the sitting member, so that it may be considered as well proved. The evidence does not prove the present political character of all the district registrars. Some are proved to be the political friends of the sitting member; as to the others, there is no proof, but they were all appointed by Ansell or Thomas, who were the political friends of the sitting member.

It was conceded before the committee by the sitting member that the registration throughout the county was entirely quiet and peaceful in form; that there was no violence or disturbance or show of force or threatening at the places of registration; but he claimed that there was such a general feeling of hostility to the strict enforcement of the registration law as to prevent all objections to registration, and thus open the door to all persons who chose to register, whether qualified or not.

As tending to support this, the sitting member examined several witnesses as to the state of things, and the general sentiments of the people of this county, during the existence of the rebellion.

. So far as the committee can gather from the testimony, it appears that before the general emancipation, this was largely a slaveholding county, and the general sentiment and opinion on the subject of slavery like that of other slaveholding communities. On the breaking out of hostilities in the South, the people of this county largely sympathized with the South, and a considerable number of persons from this county went into the confederate service, and a large majority of those who did not were very reluctant to enter the service of the United States. During the war this county was in a more peaceable condition than many other parts of the State; there was less of the marauding and guerilla bands, and the Union men were not generally molested in person or property, though the public sentiment was such that Union men deemed it advisable not to make their Union sentiments very conspicuous. Several witnesses on the part of the sitting member state that in their opinion it would have been unsafe for Union men to have appeared before the registrars and objected to the registration of men on the score of disloyalty, and testified to such disloyalty; that they would have subjected themselves to personal danger; and many of these witnesses state their opinion of the number of persons in the county entitled to registration under the law. They vary in this estimate from 150 to 280.



But, on the other hand, the district registrars above named, and a considerable number of other witnesses, testify that there was no danger of personal violence to be apprehended by any person who saw fit to appear and make objections.

From the mass of conflicting opinion on this subject, and from the character of the threats proved, the committee comes to this conclusion, that there was no just and reasonable ground to fear personal violence or injury in consequence of appearing to make and support objections to registration; but that it was against the general and public opinion of the county that persons who had not committed disloyal acts should be disfranchised merely on the score of opinions and sympathies, and that probably many persons did refrain from making objections rather than encounter this general sentiment.

The committee does not regard this as any such unlawful interference with or obstruction of the law as furnishes ground to invalidate the registration. Nor does the committee regard any threats to seek redress against refusal of registration, by resort to legal tribunals by suit, as unlawful, so as to produce that effect.

Some attempt was made to affect the case by proof that a convention of returned rebel soldiers was held at Fulton, at the same time that the registration was being made at that place. But this seemed effectually disposed of when it appeared that this convention of rebel soldiers passed resolutions that they would not attempt to register, or vote, or have to do with the election. The claim of the sitting member, that the state of things was such that registration was open to all, and availed of by all, disloyal as well as loyal, is to a considerable extent disproved by the fact that in Callaway County, in 1860, 2,446 votes were given for member of Congress, while in 1866 only 1,636 were given, more than 800 difference, without any evidence of a decrease of population, or that there had not been the ordinary increase of that section.

It appears, too, that a considerable number of persons who did offer to register were rejected: in Fulton Township, 15; Nine Mile Prairie, 15; Round Prairie, 9; Bourbon, 3.

In the other townships the rejected list is not given, and it does not seem to be required in the copy to be returned to the secretary of state. That there were such in others is evident from the evidence of John Yount, registrar of Cedar Township, who was inquired of if his registration book does not show a good many rejected, to which he answered, "Yes, sir; right smart."

The committee, upon all the evidence, cannot find that there was any such misconduct or disregard of the law by the district registrars, or any such fear or intimidation excited, either upon the registrars or upon loyal men generally, as to preclude a fair and legal registration of this county, or to justify a total rejection of its vote for any such cause.

The committee does not understand that it is claimed for the sitting member that if the vote of this county is to be counted, except so far as he shows the contestant received illegal votes, that his evidence shows a sufficient number to prevent the election of the contestant. Even striking out all those who had entries made against them by Thomas, more than enough are left to give the contestant a majority.

But those entries are not, in the judgment of the committee, any evidence of the disqualification of the person registered.

As has before been shown, Thomas had no authority to make them, and could give them no additional force by spreading them upon this copy of the registration of the county.



Thomas, upon inquiry as to the evidence upon which he acted in making these entries, says :

In cases of bonded persons I took it from a list furnished me from the adjutant general's office; those under the head of remarks, who were designated as enrolling disloyal, were taken from an enrollment made by Colonel Kerkel in 1862; under the head of other remarks, there were very few of them. The remarks made of this last class were made upon my own knowledge.

We have been cited to no law by which these lists of persons, as *under bonds*, or *enrolled disloyal*, are made evidence for any purpose beyond the specific one for which the lists were made; and upon what authority or evidence the lists were made is not shown. It is left altogether in doubt whether Thomas had the original enrollment made by the military authorities, or had only an unauthenticated copy. But however much weight the enrollment itself might be entitled to if produced in evidence here, the common principle of requiring the production of written evidence, and not receiving its contents from a witness, is a sufficient answer to bringing them in in this manner. The attempt of Thomas to make facts "*within his own knowledge*," or "*facts generally admitted*," evidence, by thus entering them upon this copy of registration, is a still wider departure from all proper rules of evidence. The evidence in the case shows that a few persons who had actually been engaged in the rebellion were registered as qualified voters; and giving full credit to the opinions of the witnesses of the sitting member as to the number of persons in the county entitled to be registered under the law, it would appear that a large number must have been registered who were disqualified by reason of having *sympathized* with those engaged in rebellion.

The committee has already had occasion to express its judgment (which was sanctioned by the House) of the insufficiency of such general estimates for the purpose of proving either the qualification or disqualification of voters, and when such estimates are founded upon the sentiments and opinions of others, instead of tangible causes, they are still more dangerous as evidence.

In order to show how this same matter involved in this contest has been considered and treated by the authorities of the State of Missouri, the committee deems it proper to state that, at the same election, William H. Bailey was a candidate for county clerk of Callaway County, of the same party, and upon the same ticket with the contestant, and received substantially the same vote. He was declared elected, and was afterwards commissioned by the governor of the State, and is now exercising the duties of that office.

The committee, therefore, recommends the adoption of the following resolutions :

*Resolved*, That George W. Anderson is not entitled to a seat in this House as a representative in the fortieth Congress from the ninth congressional district of Missouri.

*Resolved*, That William F. Switzler is entitled to a seat in this House as a representative in the fortieth Congress from the ninth congressional district of Missouri.

---

#### MINORITY REPORT.

Mr. McClurg, the minority of the committee, submits the following as his views :

In this case, Switzler *vs.* Anderson, from the ninth congressional district of Missouri, the majority report is adverse to the sitting member.

The minority is not unconscious of the embarrassed position of a report



from one of a committee, especially when that one is from the State and in favor of a political friend. But it is here submitted that the question to be discussed is not merely whether this man or that shall occupy a seat in this House, but whether the loyal citizens of a congressional district shall virtually be disfranchised in consequence of a total disregard of law by the disloyal. This is an important question to the loyal people of a State tried by the fires of a rebellion still smouldering.

It is proposed to show in this report the existence of such a state of fear and intimidation in the county of Callaway, in said district, as to have prevented a legal registration of the voters.

The constitutionality of the registration law of Missouri is, in this case, not questioned. At an earlier day of the present session of Congress, in the case of *Birch vs. Van Horn*, that question was decided by the House. Mr. Poland said in the report:

Your committee believes that the provisions of the new constitution of Missouri may be supported, so far as they require this oath of voters, without at all trenching upon the decision of the Supreme Court.

Each of the States of the Union have hitherto regulated suffrage within their own limits for themselves, and in such manner as the people of the State deemed most conducive to their own interests and welfare. Suffrage is a political right or privilege which every free community grants to such number and class of persons as it deems fittest to represent and advance the wants and interests of the whole. No State grants it to all persons, but with such limitations as the interests of all and the interests of the State require.

When once granted, it is not a vested, irrevocable right, but is held at the pleasure of the power that gave it, and the State may, by a change of its fundamental laws, restrict as well as enlarge it. When, therefore, the State of Missouri, in changing its constitution, saw fit to declare that the interests of the State and of the people of the State would be promoted by withholding the right of voting from all persons who could not take the prescribed oath, they exercised no greater or higher power than exists in every State.

The report was unanimously concurred in by the committee and was adopted unanimously by the House.

In the present case the question is as to the legal enforcement of the registration law enacted under the constitution of Missouri. If that law was complied with in Callaway County, W. Switzler, so far as that question can affect the case, will be entitled to the seat; otherwise Mr. Anderson will retain it.

The law applicable to this case is as follows:

The first section of "An act supplementary to an act entitled 'An act to provide for the registration of voters, approved December 16, 1865,'" approved March 12, 1866, is as follows:

SECTION 1. The supervisors of registration for the several counties, and for each senatorial district in the city and county of St. Louis, are hereby required to make out and forward to the secretary of state, immediately after the completion of the registration in their respective counties and districts, a certified copy of the registration thereof, which shall contain the names of all registered voters; which certified copy shall be evidence of the facts therein stated, and may be used as such in any contested election case, or other legal proceedings. (General Statutes of Missouri, page 910.)

#### RIGHT OF SUFFRAGE.

[Third and sixth sections of Art. XI of the constitution of Missouri.]

SEC. 3. At any election held by the people under this constitution, or in pursuance of any law in this State, or under any ordinance or by-law of any municipal corporation, no person shall be deemed a qualified voter who has ever been in armed hostility to the United States, or to the lawful authorities thereof, or to the government of this State, or has ever given aid, comfort, countenance, or support to persons engaged in any such hostility; or has ever in any manner adhered to the enemies, foreign or domestic, of the United States, either by contributing to them, or by unlawfully sending within their lines money, goods, letters, or information; or has ever disloyally held communication with such enemies, or has ever advised or aided any person to enter the service of such enemies; or has ever by act or word manifested his adherence



to the cause of such enemies, or his desire for their triumph over the arms of the United States, or his sympathy with those engaged in exciting or carrying on rebellion against the United States; or has ever, except under overpowering compulsion, submitted to the authority or been in the service of the so-called "Confederate States of America," or has ever left this State and gone within the lines of the armies of the so-called "Confederate States of America," with the purpose of adhering to said States or armies, or has ever been a member of, or connected with, any order, society, or organization inimical to the government of the United States, or to the government of this State; or has ever been engaged in guerilla warfare against loyal inhabitants of the United States, or in that description of marauding commonly known as "bush-whacking," or has ever knowingly and willingly harbored, aided, or countenanced any person so engaged; or has ever come into or has left this State for the purpose of avoiding enrollment for, or draft into, the military service of the United States, or has ever with a view to avoid enrollment in the militia of this State, or to escape performance of duty therein, or for any other purpose, enrolled himself, or authorized himself to be enrolled by or before any officer as disloyal or as a southern sympathizer, or in any other terms indicating his disaffection to the government of the United States in its contest with rebellion, or his sympathy with those engaged in such rebellion, or having ever voted at any election by the people in this State, or in any other of the United States, or in any of their territories, or held office in this State, or in any other of the United States, or in any of their territories, or under the United States, shall thereafter have sought or received under claim of alienage the protection of any foreign government, through any consul or other officer thereof, in order to secure exemption from military duty in the militia of this State or in the army of the United States; nor shall any such person be capable of holding in this State any office of honor, trust, or profit, under its authority, or of being an officer, councilman, director, trustee, or other manager of any corporation, public or private, now existing or hereafter established by its authority, or of acting as a professor or teacher in any educational institution or in any common or other school, or of holding any real estate or other property in trust for the use of any church, religious society, or congregation. But the foregoing provision in relation to acts done against the United States shall not apply to any person not a citizen thereof, who shall have committed such acts while in the service of some foreign country at war with the United States, and who has since such acts been naturalized, or may hereafter be naturalized under the laws of the United States, and the oath of loyalty hereinafter prescribed, when taken by any such person, shall be considered as taken in such sense.

SEC. 6. The oath to be taken as aforesaid shall be known as the oath of loyalty, and shall be in the following terms:

I, A. B., do solemnly swear that I am well acquainted with the terms of the third section of the second article of the constitution of the State of Missouri, adopted in the year 1865, and have carefully considered the same; that I have never, directly or indirectly, done any of the acts in said section specified; that I have always been truly and loyally on the side of the United States against all enemies thereof, foreign and domestic; that I will ever bear true faith and allegiance to the United States, and will support the Constitution and laws thereof as the supreme law of the land, any law or ordinance of any State to the contrary notwithstanding; that I will to the best of my ability protect and defend the union of the United States, and not allow the same to be broken up and dissolved, or the government thereof to be destroyed or overthrown under any circumstances, if in my power to prevent it; that I will support the constitution of the State of Missouri, and that I make this oath without any mental reservation or evasion, and hold it to be binding on me.

#### OFFICERS OF REGISTRATION.

Sections eight and nine of "An act to provide for the registration of voters," approved December 16, 1865, are as follows:

SEC. 8. In the books furnished to the officers of registration, as aforesaid, there shall be printed or written the oath of loyalty aforesaid, followed by space sufficient for every voter to subscribe his name and place of residence thereunder; and in cities having streets and houses numbered, the street and number of each voter's residence shall be placed opposite his name; and no person's name shall be registered as a qualified voter unless he appear before the said officer and take and subscribe said oath, except in the cases provided for in the twenty-third and twenty-fourth sections of the second article of the constitution. For persons relieved from disqualification under the said twenty-third section, a separate oath shall be written or printed in said book, in conformity with the constitution, to be taken and subscribed by them. If any person subscribe either of said oaths by making his mark, his signature shall be witnessed by the officer of registration by signing his name opposite thereto.

SEC. 9. The officer of registration shall have power to examine under oath any person applying for registration as to his qualifications as a voter, and he shall, before enter-



ing the name of any person upon the register of qualified voters, diligently inquire and ascertain that he has not done any of the acts specified in the constitution as causes of disqualification; and if from his own knowledge or from evidence brought before him, he shall be satisfied that he is disqualified under any provision of the constitution, he shall not enter his name as a qualified voter, though he may have taken and subscribed before him the oath of loyalty aforesaid, but shall enter it in a separate list of persons rejected as voters; and in connection with such entry he shall state the grounds of the rejection, and he shall also note every appeal from his decision by making an entry of the fact opposite the name of the party taking such appeal. The officer of registration shall have power to administer oaths to all parties appearing before him for registration or as witnesses.

#### REJECTION OF THE VOTE OF CALLAWAY COUNTY BY THE SECRETARY OF STATE.

The supervisor of registration for the county of Callaway certified to the copy of registration made out and forwarded by him to the secretary of state, (see page 88, testimony of contestee,) as follows:

I hereby certify that the above and foregoing list of registration is a correct copy, "as furnished me by the officers of registration," for the various election districts in and for Callaway County, Missouri. And I hereby further certify that the registration law in its letter and spirit was not carried out in any one of the election districts of said county; that such a system of intimidation and threatening was carried on by the disloyal and those opposed to the law, as to deter loyal men from undertaking the registration in most of the election districts, and was consequently intrusted to men who most shamefully disregard the law.

In the few districts where men could be had who were willing to register according to the law, there was such intimidation and threatening used as to deter those who were willing to make objections to those they knew not to be entitled to registration as qualified voters, and as a consequence the law could not and was not carried out, as the certificates hereto appended show.

Given under my hand this December 12, 1866.

WILLIAM H. THOMAS,  
*Supervisor of Registration for Callaway County, Mo.*

In consequence of that certificate and similar ones (see pages 88 and 89, testimony of contestee) by registrars of townships, the secretary of state did not open the election returns from said county. The returns from the other counties showing a majority of 178 votes for the sitting member, the secretary of state issued to him the certificate of election.

As it is admitted that the committee and the House can go behind all certificates and purify the ballot-box, if it can be purged, and inquire into the enforcement of the law, and reject illegal votes, or set the election aside if the truth cannot be ascertained, the minority will not stop to controvert the correctness of the conclusion arrived at by the majority of the committee, "that the secretary of state should have issued the certificate to the contestant," but proceed to show that the vote of said county should be rejected by this House in consequence of the general and shameful disregard of the law.

#### NOT A LEGAL REGISTRATION IN CALLAWAY COUNTY.

Bearing in mind that the voter was required to swear to a want of "sympathy with those engaged in the rebellion," and to "have always been truly and loyally on the side of the United States against all enemies thereof, foreign and domestic," attention is directed to the following testimony:

##### *1st. To show the present disloyal population.*

H. S. Turner testifies, on page 10 of H. Mis. Doc. No. 39:

Question. What do you suppose could be the number of qualified voters in Callaway County, under the registry law?—Answer. About 280 at that time.



William B. Miller, on page 11, same Mis. Doc., to a similar question, replied :

Not many ; about 200.

J. J. P. Johnson, on page 13, to a similar question, replied :

About 160, judging from their acts and sentiments during the war.

W. H. Thomas, the supervisor of registration of Callaway County, on page 21, testifies to a similar question :

As to the number, exactly, it is difficult to tell ; the last six years Union men, generally, have become known to each other, and from the best information I have upon the subject, the number will reach perhaps two hundred ; perhaps more, perhaps less.

Hiram Cornell, a deputy provost marshal under the conscription law, on page 25 testifies :

Question. In your opinion, what would be the number of qualified voters in Callaway County under a proper execution of the registry law ?—Answer. Not over 250.

*2d. To show disloyalty during the rebellion.*

William B. Miller, page 11, Mis. Doc. No. 39, testifies :

Question. What was the status of your people during the war ?—Answer. They were pretty rebellions.

Q. Was the general sentiment of your township southern ?—A. Yes, sir, generally it was.

Jonathan McKinney, on pages 12 and 13, testifies :

Question. How long have you lived there ?—Answer. Most of my time for thirty years.

Q. What was the character of the sentiments of the people of that township ?—A. Generally southern.

Q. Was the sentiment of your township general ?—A. Yes, sir, it was nearly unanimous.

Q. Were there any outspoken Union men in your township ?—A. There were some ; I could not speak my sentiments in every crowd ; I was told that if I did not keep quiet I would be hung.

Q. Why was it a Union man could not say what he pleased ?—A. They did not allow it.

Q. Do you believe it would have been safe for a Union man to have expressed his sentiments during the war ?—A. It would not in my township.

Q. What is your acquaintance in the county ?—A. Not much.

J. J. P. Johnson, of Cedar Township, on pages 13 and 14, testifies :

Question. How was the majority of the people of your township ?—Answer. Against the government.

Q. Was the sentiment of the county overwhelmingly disloyal ?—A. Yes, sir.

Q. Have you held any position during the war ?—A. I did not. I am now county judge. I was in the military service ; raised the first company of home guards raised on this side. I could only get twenty men in this county.

On cross-examination, same witness testifies :

Question. Are you a member in good standing in the radical party ?—Answer. I don't know, sir.

Q. Were you not a radical candidate for the legislature at the last election ?—A. I suppose I was.

Q. How many votes did you receive ?—A. One hundred and fifty-eight in the county.

Q. How many votes did you receive in your township ?—A. Forty, I believe.

Q. Do you know of any men who had been rebels who voted for you and Colonel Anderson in this county ?—A. I think there were two or three.

Q. Are you willing to give it as your opinion, under oath, that the thirteen hundred or fourteen hundred men who registered and voted at the last election committed perjury ?—A. I think the law is against them, according to its letter.

Q. Do I understand you to say that, according to this law, the thirteen hundred or fourteen hundred who voted committed perjury ?—A. I do.

Q. Is it your opinion that any man in Missouri can be a true Union man and vote without being a radical ?—A. I think there are.

Q. How many Union men in Callaway that are not radicals ?—A. I think there are a few good honest men who voted against the radicals at the last election through ignorance.



Q. As a candidate for the legislature, did you not have an opportunity to enlighten them?—A. I was not aspiring for the office; never made a speech in the county.

Q. After being defeated by about one thousand, did you not go to Jefferson City and try to get it?—A. I went there to test the right whether a loyal man or a rebel should have it, as my opponent had been in the rebel army.

Q. How did you know your opponent had been in the rebel army?—A. I had proof of it from men who saw him—who had fought with him and against him.

Marcus Bird, on page 16, testifies:

Question. Where do you live?—Answer. In Round Prairie Township, Callaway County, and have lived in this county about forty years.

Q. Were you one of the enrolling officers under the conscript act?—A. Yes, sir.

Q. Were you pretty well acquainted with the sentiments of the people in your county toward the government?—A. Yes, sir; it was against the government.

Q. Did you find any active loyal men in the county?—A. Yes, sir, some; but the disloyal sentiment was overwhelming.

John Yount, on page 17, testifies:

Question. Where do you reside?—Answer. In Cedar Township, Callaway County.

Q. How long have you lived there?—A. A little over thirty-one years.

Q. Were you the registrar of Cedar Township?—A. Yes, sir.

Q. Were you well acquainted with the sentiments of the people of that township during the war?—A. Tolerably well.

Q. Was the sentiment for or against the government?—A. Against it.

Abraham Snethen, of Cote Sans Dessein Township, on page 18, testifies:

Question. What was the sentiment of the people of your township toward the government during the war?—Answer. I thought they were intensely disloyal, from hearing them talk and seeing their movements.

Q. Was it safe in that township for a Union man to express his sentiments during the war?—A. I did not consider it so.

Wm. H. Thomas, supervisor of registration of Callaway County, on page 21, testifies:

Question. Was the disloyal sentiment overwhelming in the county?—Answer. I think it was.

Hiram Cornell, on page 25, testifies:

The rebel, or southern, sentiment has always largely prevailed here.

James S. Henderson, on page 26, testifies:

I've lived here about forty years; my acquaintance might be said to be general.

Question. What was the general sentiment of the county, loyal or disloyal?—Answer. So far as my acquaintance goes, it was disloyal.

The testimony shows conclusively that in 1862, when loyal men were called upon to enroll themselves in the militia, but few could be found in Callaway County. On this point, Hiram Cornell testifies, on page 26:

Question. What number of men organized at the first organization?—Answer. Three companies of the five were ordered into active service in ten days after they organized; the third company did not do active duty, on account of the officers not being commissioned, as they were disloyal; there were less than sixty-four in my company; I don't remember the number in the other companies.

Five companies organized, and but two could be confided in for loyalty. But there is testimony showing the opinion of another, perhaps, from his position, better qualified to judge intelligently. The testimony of W. W. Devenport, on pages 7 and 8, gives the opinion of the contestant in this case, when he was provost marshal of the district. He testifies as follows:

Question. Who was provost marshal of the district?—Answer. Colonel Switzler, and then Lovelace, and then Adams, who was president of the board, by virtue of his office of provost marshal.

Q. While William F. Switzler, the contestant in this case, was president of the board, was there much difficulty in executing the conscript law in this county—Callaway?—A. There was, sir; the enrolling officers had to be furnished with heavy guards while performing their duties, being afraid to go out of town without them.

Q. Did Colonel Switzler furnish to the provost marshal general any excuse for not



enrolling the county of Callaway in time; and if so, what?—A. He did; letters reprimanding him for his tardiness in enrolling the district were received by him, both by the provost marshal general of this State and the Provost Marshal General of the United States; he gave as his reason the condition of the county in which the officer had to operate. This county was about the last in the district in which the enrollment was finished, the reason for which was, as stated by him to the provost marshal general, that he could not obtain suitable escorts to accompany the enrolling officers.

Q. Have you any knowledge of a communication while he was president of the board to the provost marshal general, in which he expressed an opinion as to the loyalty or disloyalty of the people of Callaway County?—A. My recollection is, that in one of his communications to the provost marshal general, in regard to the dilatoriness in enrolling this county, he expressed the opinion that there were not two hundred loyal men in it.

Q. What other means did you have of knowing his opinion of the loyalty of the county?—A. He was very much annoyed with the slow progress of the enrollment; frequently expressed himself in regard to it, frequently designating it as the South Carolina of Missouri; I repeatedly heard him say there were not two hundred loyal men in it, in his opinion.

Q. What would be your opinion, with your means of knowing, as to the number of qualified voters in Callaway County, under a proper execution of the registry law?—A. I have no means of knowing, except information received while connected with the provost marshal's bureau; I thoroughly coincided with Colonel Switzler in his estimates as to the number of loyal men in the county then, and have had no reason to change my opinion since.

#### INTIMIDATION.

With this overpowering rebel sentiment existing in this (Callaway) county, it can be readily understood how easily a system of intimidation could have been inaugurated by the leaders of the disloyal, so as to prevent the due execution of the law.

Was the advantage of their overwhelming numbers used?

John Yount, registrar in Cedar Township, on page 17, Mis. Doc. No. 39, testifies:

Question. Were threats made against the officers of registration?—Answer. Nothing except lawsuits; they said around they would have a free election or a free fight.

Abram Snethan, on page 18, testifies:

Question. Do you know of any intimidation in your township against the execution of the registry law?—Answer. It was a common thing to make threats then, but I don't think they were put into execution.

Q. State the character of the threats.—A. If they could not vote, they would prevent others from doing so.

William H. Thomas, supervisor of registration for Callaway County, on page 20, testifies:

Question. State whether there was a system of intimidation in this county to deter officers of registration from properly enforcing the registry law.—Answer. Before the commencement of the registration there was a great deal of talk against the registration law, and threats that it should not be carried out, which created what I call a system of intimidation that deterred many men from undertaking the registration who were disposed to faithfully carry out the law.

On page 23, same witness testifies:

It was the general talk throughout the county among the disloyal that they intended to have a "free election or a free fight," and they intended to register anyhow or have a fuss over it. That kept men from going to the place of registration and laying in objections.

Same witness, on page 20, testifies:

Question. What advice was given to the people concerning the law by the conservative press, speakers, and candidates for office?—Answer. Their advice was somewhat various; some advised confederate soldiers to open polls of their own; others advised their friends to go and take the oath and demand their right to vote, and vote; conveying the idea to my mind that they *must do so*, peaceably if they could, and forcibly if they could not. A great many persons advised the taking of the oath and registering, holding it to be unconstitutional and of no force.

But there is other testimony, and of still more importance, showing



the attempt to institute a reign of fear. The contestant himself, who now would enjoy the fruit of such attempt, seems to have been more than a disinterested spectator.

On the 4th page of his own testimony, Mis. Doc. No. 12, a witness placed on the stand by himself, to wit, James E. Turley, registrar in Bourbon Township, testifies, when confronted by contestant, as follows:

Question. What did these persons say that scared you?—Answer. When you (contestant) spoke in the court-house, you asked if the supervisor was present, and when told that he was not, then asked if any registrars were present, and he (contestant) told them that we (registrars) were in a very delicate situation, and to be careful.

The effect of such language in a public speech in a county court-house, where disloyalty largely prevailed, used by an intelligent and influential leader as the contestant is, is readily understood. The very indefinite character of the language was only the more calculated to alarm. To have said to the registrars, "Execute the law, and we will strike you down," would have given ground for the arrest of the speaker, and could have led to the enforcement of the law under military protection; but a cunning, designing man could in safety say, "Be careful, you are in a delicate situation," and thus accomplish as well his object, the intimidation of the officers and of those who were disposed to come forward as witnesses.

Another witness, William H. Burnham, belonging to an influential profession, testifies, on page 8, Miss. Doc. No. 39:

"I am a Baptist minister."

Question. Did you not, in a speech in the court-house in Fulton, advise the people to go to the polls to vote, and demand their right to vote?—Answer. I advised them as citizens and heavy tax-payers to go to the polls and demand their right to vote.

Q. Did you regard the voter's oath as binding?—A. I did not, in a moral sense. I regarded it as an outrage on the rights of freemen.

But the enemies of a legal registration in this county were not satisfied with the influence alone of their county leaders in the work of intimidation, and we find one of their leaders in the State at large appearing there on the stage and adding the powerful influence of his voice to that of Baptist ministers and that of the contestant.

An intelligent Baptist minister, on page 8, testifies:

Question. Were not the people of this county advised to take the oath imposed by the constitution, upon the ground that this provision of the constitution was unconstitutional, and the State had no right to impose that oath on the voter?—Answer. I did hear the people so advised by Mr. Frank P. Blair, of St. Louis.

The effect is readily understood of such words of advice from such leaders, intermingled with threats of violence, where the disloyal sentiment and numerical force were largely in the ascendant.

The above testimony is sufficient to show good reason for a settled and general feeling of fear and intimidation. And the registration itself shows that it did exist, even if there were no further evidence. The very fact that two thousand and thirty-four were registered, is of itself sufficient. But there is other testimony. Was the effect produced that would have been inferred?

On page 9, Mis. Doc. No. 39, H. S. Turner, in Round Prairie Township, testifies:

Question. What did you do in the way of registering that township?—Answer. I registered one day.

Q. Did you then resign the position?—A. I did, sir.

Q. What were your reasons for so doing?—A. I found I could not execute the law properly.

Q. What were the difficulties you had to contend with?—A. A great many refused to be questioned as to their qualifications.

Q. Those whom you registered, did they refuse to be questioned?—A. A good many, did, sir.



Q. Did you believe, from your knowledge of the township at the time, that a proper registration of the township could be made under the law?—A. I did not, sir.

Q. Were persons whom you knew to be disqualified demanding to be put on the lists as voters?—A. Yes, sir.

Q. Were persons registered in that township by Mr. Maupin whom you knew to be disqualified?—A. A number of them, sir.

James E. Turley, registrar in Bourbon Township, on page 10, testifies:

Question. Was there any difficulty in registering that township?—Answer. None between me and the people.

Q. Did you register every one who would take the oath?—A. Some I persuaded not to apply, as they were disqualified, and others went away without offering to take it.

Q. Were objections made to those offering to register?—A. None, sir.

Q. Have you any reason to believe that objections would have been made if those desiring to object had thought themselves safe in objecting?—A. They told me so; that is the best evidence I have.

John Yount, registrar of Cedar Township, on page 17, testifies:

Question. Were there any objections made to those registering?—Answer. No, sir; some told me they were afraid to act as witnesses.

Q. What was the reason?—A. On account of the disloyal.

On cross-examination by contestant, same witness testifies:

Question. Did you have any trouble from intimidation or otherwise in registering your township?—Answer. I did not; witnesses said they would not attend, and I did not think it safe to risk it myself.

Abram Snethen, page 18, testifies:

Question. Did such threats prevent men from acting as witnesses before the registrar against disqualified persons?—Answer. I think they did.

James S. Henderson, on page 26, testifies:

I've lived here (Fulton) about forty years; my acquaintance might be said to be general.

Question. Were you applied to by the supervisor of registration to register Fulton Township?—Answer. Yes, sir.

Q. Did you decline to do so?—A. I did.

Q. What were your reasons for declining?—A. I did not wish to register the township.

Q. Did you believe you could properly enforce the registry law?—A. I did not know that I could not, but didn't wish to have any conflict with the inhabitants.

It thus appears that the efforts of the contestant and other leaders to produce a state of fear and intimidation were successful, as the evidence is conclusive that the efforts were made, and that the fear thereafter existed, and to such an overpowering extent that the disqualified demanded to be put on the lists of voters, refusing to be questioned, and that those who would have objected as witnesses did not object, believing it to be unsafe.

Should there be a remaining doubt, the following testimony proves as clearly that such a state of things existed as that fruit proves the character of the tree.

On page 10, Mis. Doc. No. 39, H. S. Turner, who served one day as registrar in Round Prairie Township, and resigned because he "could not execute the law properly, a great many refusing to be questioned," testifies:

Question. Who was appointed afterward to register that township?—Answer. A. B. Maupin.

Q. Were persons registered in that township by Mr. Maupin whom you knew to be disqualified?—A. A number of them, sir.

On pages 20 and 21, William H. Thomas, supervisor of registration for the county, testifies:

Question. Were you present at the registration of voters at any time in the township of Fulton?—Answer. For some time previous to the registration in Fulton Township I had been endeavoring to get various men whom I thought would carry out the law in Fulton Township. I found it difficult to do so. As a final resort, I appointed Mr. J. D. Snedcor, who had acted as provost marshal for the county, who, I thought, had a



better chance to do the work legally than any other man I could get. I went into his office soon after he commenced, and saw him register a number of persons.

Q. How did he register such persons as you saw him register in the beginning?—A. I thought his whole movements were contrary to the law in this, that he subscribed the names of applicants instead of their subscribing their own names, as the law directs; and that he merely asked them if they could take the oath, instead of administering it; and that he totally failed to administer the additional oath given under the attorney general's instructions, by which to ascertain the true qualifications of applicants. I protested against the proceeding as being illegal, became disgusted, and left the office. I was not in the office of any other registrar in the county.

It is true this registrar, Snedikor, on page 14, Mis. Doc. No. 12, testifies, on the part of the contestant, that he enforced the law :

Question. Did you have any difficulty in enforcing the registry law in its letter and spirit in your township?—Answer. I did not.

To show the spirit in which he enforced the law, reference is made to testimony on page 9 of Mis. Doc. No. 39. Jesse Garner testifies:

Question. Mr. Garner, where do you reside?—Answer. I have lived in this county ten or eleven years.

Q. Were you in the military service during the war?—A. I was, under Jackson's first call for State troops.

Q. Were you in a battle during the war?—A. I was in the battle of Wilson's Creek.

Q. On what side did you fight?—A. I fought under General Sterling Price.

Q. Were you registered as a qualified voter in November?—A. I was registered.

Q. By whom were you registered?—A. By Mr. Snedikor.

Q. Were you wounded in the battle of Wilson's Creek?—A. Yes, sir, I was.

Q. Did you return to Fulton?—A. Yes, sir.

Q. Did Mr. Snedikor, the registrar of Fulton Township, see you after you returned?—A. Yes, sir; I expect he did.

Q. Did he make any inquiry of you when you registered?—A. I told him that I had been called out by Jackson, and that I fought at Wilson's Creek.

As this registrar, Snedikor, may be again referred to, let it be borne in mind that he swears he enforced the law in spirit, and, at the same time, registered a rebel soldier who "told him that he had fought at Wilson's Creek."

In another township, Nine-mile Prairie, William B. Miller testifies:

Question. Did you know of any persons whom you knew to be disqualified under the law registering in that township?—Answer. Yes, sir, I did.

Q. How did you know they were disqualified?—A. Well, one of them had his arm taken off at Moore's Mill fight; his name was Franklin Bruce.

Q. What service was he in?—A. He was in the rebel service.

Q. Give the names of any other men besides Bruce that had been in arms against the government who registered in your township.—A. There was one Scholl, Hutz, and James Bayley.

In another township, St. Aubert, Albert C. Herring testifies, on page 15:

Question. Where do you live?—Answer. In St. Aubert, in this county.

Q. Were you ever in the rebel service?—A. I was; I joined in the fall of 1864.

Q. Were you registered as a qualified voter in St. Aubert Township?—A. I was.

Q. By whom were you registered?—A. By George A. Moore.

Q. Did he administer the oath to you?—A. He did.

Q. Did he administer the oath to you, or did he ask you whether you could take it?—

A. He administered it.

Q. Did he administer any oath to you to inquire whether you were qualified?—A. No, sir; he read the oath to me, and registered me as a qualified voter.

And yet the registrar swears (page 9 of contestant's testimony, Mis. Doc. No. 12) he complied "in letter and spirit with the registration law," and his testimony is relied upon by the contestant to prove the legality of the registration.

#### FEAR STILL OPERATING WHEN TESTIMONY WAS TAKEN.

Why, it is apparent in the testimony, although not taken with a view of disclosing the fact, that through the fear above proven, witness



did not testify freely. Abram Snethen (on page 18, Mis. Doc. No. 39) testifies, when cross-examined by the contestant:

Question. Can you give the name of any man in your township whom you heard threaten?—Answer. I don't think I can feel safe in doing so.

Being still pressed by the contestant, and feeling a sense of danger, to the question, "Do you remember the name of any man whom you heard threaten?" he replied, "I don't remember any."

The reluctance with which James S. Henderson, a witness for sitting member, on page 37, Mis. Doc. No. 39, testifies as to the reason he declined to act as registrar, can only be accounted for on the ground of fear still existing. To the question, "What were your reasons for declining?" he answered, "I did not wish to register the township." It required another question to bring the reply, "I did not wish to have any conflict with the inhabitants."

And what, but this prevailing fear aroused by contestant and his friends, could have caused the registrars to disregard the lists of disloyal names furnished them by Mr. Thomas, the supervisor of registration? The testimony on page 20, Mis. Doc. No. 39, shows that copies of those enrolled as disloyal in 1862 were furnished the registrars. While those copies of lists of names do not come to the committee as satisfactory evidence that the persons named were disloyal, there can be no doubt the registrars would, in the absence of other testimony, have rejected them under a strict enforcement of the law, that "no person shall be deemed a qualified voter who had enrolled himself, or authorized himself to be enrolled, as disloyal or a southern sympathizer." But (see page 20) about five hundred of them on such lists were registered as qualified voters, notwithstanding the law requires (section 9) that "the officer of registration shall, before entering the name of any person upon the register of qualified voters, diligently inquire and ascertain that he has not done any of the acts specified," &c., among which acts, having enrolled as disloyal is one. With the *prima facie* evidence in their hands, the registrars institute no inquiry, which is accounted for by the fear to exercise their "own knowledge," which they were required by law to exercise, and the fear of others to come forward and testify.

In five out of nine townships in the county not one rejected name is to be found, and there were but forty-one in the entire county rejected.

In view of such a state of things, is it to be wondered at that Confederate soldiers, who met at the county seat on the third day of registration "to decide whether they would vote independent of the registration or not," "went and did nothing?" (See page 27, Mis. Doc. No. 39.)

Seeing no objection on the part of either registrars or others to returned rebel soldiers, even to the well-known wounded and one-armed, it was unnecessary for them "to decide to vote independent of the registration," and of course they "went and did nothing."

#### THE BALLOT-BOX CANNOT BE PURIFIED.

Sufficient testimony has been quoted to satisfy the House that such a state of fear existed in Callaway County that there was not a proper enforcement of the law, but such a disregard that it is impossible to ascertain what should have been the legal vote in regard to numbers; disloyalty being triumphant, the loyal intimidated, registrars powerless, witnesses awed into silence, "a quiet election," and even "a quiet registration," because the disloyal controlled all as they desired.

Loyalty and justice demand that the election in that county (Callaway) be regarded as a nullity; that treason be thus rebuked, and those who



failed in their efforts to destroy their government by the bullet be taught that, if permitted to control it by the ballot, they shall not be permitted to do so in open and flagrant violation of the law.

The rejection of the vote of that county leaves the contestee in his seat.

J. W. McCLURG.

---

[SECOND REPORT.]

SWITZLER vs. ANDERSON.

January 14, 1868.—Mr. Cook, from the Committee of Elections, made the following report:

*The Committee of Elections, to which was referred the memorial of William F. Switzler, claiming to be entitled to the seat now occupied by George W. Anderson, as representative from the ninth congressional district of Missouri, submits the following report:*

On the 23d day of March last this committee made a report in this case, in which, after discussing the various questions arising in the case, the committee recommended the passage of the following resolutions:

*Resolved*, That George W. Anderson is not entitled to a seat in this House as a representative in the fortieth Congress from the ninth congressional district.

*Resolved*, That William F. Switzler is entitled to a seat in this house as a representative from the ninth congressional district of Missouri. (See report No. 28, 40th Congress, 2d session.)

On the 16th day of July last, after the report had been considered in the House, it was ordered that the case be recommitted to the Committee of Elections, with instructions to examine into the charges made against the contestant by the gentleman from Missouri, (Mr. Benjamin,) and to report thereon to the House, with leave to send for persons and papers. There was not sufficient time at the last session for the committee to execute the order of the House at that session; the case was consequently postponed until the present session, and time given to the parties to take proof upon the question thus referred to the committee. The charges made against the contestant by the gentleman from Missouri, Mr. Benjamin, as understood by the committee, were charges of personal disloyalty, and that he had given aid and comfort to the enemies of the republic during the rebellion. No testimony has been taken by the sitting member, or by any other person, in support of the charges which the committee was directed to investigate. A file of the newspaper of which the contestant was the editor has been submitted to the committee by the contestant. This newspaper was referred to by Mr. Benjamin in the speech made by him, and the charges made by him were partly based upon articles published in that paper. A large mass of evidence has been taken by the contestant to refute the charges made against him; but to this testimony the committee do not deem it necessary specially to refer, for the reason that, in the opinion of the committee, no evidence has been adduced which sustains the charges of disloyalty made against the contestant.

The rule adopted by the committee and the House in the Kentucky cases was thus stated:

While the committee entertained no doubt that it is the right and duty of the House to turn back from its very threshold every one seeking to enter who has been engaged in armed hostility to the government of the United States, or has given aid or comfort to its enemies during the late rebellion, yet we believe that in our government the right to representation is so sacred that no man who has been duly elected by the legal



voters of his district should be refused his seat upon the ground of his personal disloyalty, unless it is proven that he has been guilty of such open acts of disloyalty that he cannot honestly and truly take the oath prescribed by the act of July 2, 1862; and further, that the commission of such acts of disloyalty to the government should not be suspected merely, but should be proven by clear and satisfactory testimony, and that while mere want of active support of the government, or a passive sympathy with the rebellion, are not sufficient to exclude a person regularly elected from taking his seat in the House, yet whenever it is shown by proof that the claimant has, by act or speech, given aid or countenance to the rebellion, he should not be permitted to take the oath, and such acts or speech need not be such as to constitute treason technically, but must have been so overt and public, and must have been done or said under such circumstances, as fairly to show that they were actually designed to, and in their nature tended to, forward the cause of the rebellion.

The committee, after a careful re-examination of the case, adheres to the general reasoning and to the conclusions of the former report; and it further reports that while there are many things contained in the newspaper of which contestant was the acknowledged editor which the committee cannot approve, and deems mischievous in their tendency, yet there is no such proof of the disloyalty of the contestant as to exclude him from a seat in this house under the rule adopted in the Kentucky election cases as above stated. (See report No. 2, 40th Congress, 2d session.)

It is due to the contestant to say that he entirely disclaims the authorship of or any responsibility for the article published in his newspaper in relation to the death of Colonel Ellsworth, quoted in the speech of Mr. Benjamin, and stated to the committee that the same was inserted in the paper without his knowledge, and that he never approved it, and no proof has been offered showing his responsibility for the article beyond the fact that it appeared as editorial in the newspaper of which he was the editor, while the general tenor of the editorials in the same paper containing that article are of a different character.

The committee therefore again recommend the adoption of the following resolutions:

*Resolved*, That George W. Anderson is not entitled to a seat in this house as a representative in the fortieth Congress from the ninth congressional district of Missouri.

*Resolved*, That William F. Switzler is entitled to a seat in this house as a representative from the ninth congressional district of Missouri.

---

### SAMUEL E. SMITH vs. JOHN YOUNG BROWN.

Disloyalty expressed in a letter disqualifies from holding office under special congressional enactment.

Where the minority candidate claimed the seat on the ground of the ineligibility of the majority candidate, it was held that a minority of voters cannot, without special provision, elect a representative.

The House (February 13) declared Brown not entitled to the seat—yeas, 108; nays, 43; and also declared (February 15) Smith not entitled to the seat—yeas, 102; nays, 30.

January 21, 1868.—Mr. Dawes, from the Committee of Elections, made the following report:

*The Committee of Elections, to which were referred the credentials of John Young Brown, claiming to be a representative in the present Congress from the second district in Kentucky, and the memorial of Samuel E. Smith, claiming to have been duly elected as such representative, submits the following report:*

Under the resolution of reference, the committee was instructed to



"inquire and report whether John Young Brown is disqualified from sitting as a member of this house on account of his having been guilty of acts of disloyalty to the government of the United States, or having given aid and comfort to its enemies."

The said Smith contests the right of the said Brown to the seat upon the same ground, and claims for himself the seat upon what he insists to be the legal result of such acts of disloyalty on the part of Brown.

The charges against the loyalty of Brown must therefore be first inquired into, and then, if established, their legal result will be examined.

A sub-committee of the Committee of Elections, under the order of this house, visited Kentucky for the purpose of prosecuting this inquiry, and like inquiry in respect to other members elect from that State, and the result of its investigations is embodied in Mis. Doc. No. 47, 1st session, and so much thereof as pertains to the present inquiry is embodied in pages 90 to 112, inclusive. There were some other documents, which accompany this report, laid before the committee at the hearing by agreement of parties.

Both claimants were heard by themselves and by counsel, and it only remains for the committee to present the conclusions to which it has arrived upon a careful consideration of the whole evidence.

On the 2d of July, 1862, Congress enacted—

That hereafter every person elected or appointed to any office of honor or profit under the government of the United States, either in the civil, military, or naval departments of the public service, excepting the President of the United States, shall, before entering upon the duties of such office, and before being entitled to any of the salary or other emoluments thereof, take and subscribe the following oath or affirmation:

I, A. B., do solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought, nor accepted, nor attempted to exercise the functions of any office whatever under any authority or pretended authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter: so help me God.

The committee understands itself to be instructed to inquire whether the said Brown has committed any of the acts which he is required by said statute, before entering upon the duties of a representative, to make oath that he has not done.

The evidence relied upon to support this charge of disloyalty against Mr. Brown is contained in the following letter, written by him at the time it bears date, to the editors of the Louisville Courier, and published in that paper on the 15th day of May following:

[From the Louisville Courier, May 15, 1861.]

ELIZABETHTOWN, April 18, 1861.

*Editors Louisville Courier:*

My attention has been called to the following paragraph, which appeared in your paper of this date:

"JOHN YOUNG BROWN'S POSITION.—This gentleman, in reply to some searching interrogatories put to him by Governor Helm, said, in reference to the call of the President for four regiments of volunteers to march against the South—

"I would not send one solitary man to aid that government, and those who volunteer should be shot down in their tracks."

This ambiguous report of my remarks has, I find, been misunderstood by some who have read it, who construe my language to apply to the *government of the Confederate States!* What I did say was this:

"Not one man or one dollar will Kentucky furnish *Lincoln* to aid *him* in his *unholy*



*war against the South.* If this northern army shall attempt to cross our borders, we will resist it unto the death; and if one man shall be found in our Commonwealth to volunteer to join them, he ought, and I believe will, be shot down before he leaves the State."

This was not said in reply to any question propounded by ex-Governor Helm, as you have stated, and is no more than I frequently uttered publicly and privately prior to my debate with him.

Respectfully,

JOHN YOUNG BROWN.

Mr. Brown, in refutation of any inference from this letter that he had "voluntarily given any aid, countenance, counsel, or encouragement to persons engaged in armed hostility to the United States," insisted that it should be judged by the position of his State at the time it was published and his own contemporaneous acts and speeches. And he claimed that Kentucky had undertaken at that time to assume a position of strict neutrality between the Union and those who were seeking its destruction by open war, and that the best Union men of the State were making this effort in aid of the Union itself, as the only possible means open to them to prevent it from being drawn into the vortex of the rebellion; and that, inasmuch as there existed more apprehension in the minds of the people of that State of an invasion from the government than from the rebels, the language of this letter was necessary to convince them of the real character of the neutrality proposed, and was written for that purpose in aid of that neutrality. In confirmation of this construction of the letter, he appealed to the documents which accompany this report, to wit: an account of a Union meeting held in Louisville on the day of the date of the letter, at which he addressed the people; a card published by him on the 13th day of May following, announcing himself as a candidate for re-election to Congress, and comments upon the same in the Louisville Democrat and Journal, with the additional fact that no act of hostility to the government since the publication of the letter of the 18th of April, 1861, is proved against him.

Does the letter itself admit of the construction now put upon it by Mr. Brown, viz., that of enforcing neutrality between the government and its foes, or is there anything shown in the contemporaneous history or subsequent course of its author to aid such a construction? The natural import of its language is not that of neutrality, but, instead, breathes the most deadly hostility to the government of his country, and a threat of death to any one of his fellow-citizens who should aid it against its enemies. It was hostile, not only to the government itself in its struggle for its life, but also to the very *neutrality* of Kentucky which, however well intended by some of its supporters, was itself aid and comfort to the enemy in a war in which there was no middle ground, and he who was not for the government could not help being counted against it. It is not the intention of the committee, however, to discuss the question of Kentucky neutrality. It was alike an anomaly and an impossibility, and all traces of it soon passed away, leaving all who professed it to unmasked support of the cause most in accord with their sympathies.

But this letter was not faithful even to this "neutrality." He complains in this letter that he has been misunderstood, and he writes it to correct that misunderstanding. Somebody has put into his mouth these words: "*I would not send one solitary man to aid that government, and those who volunteer should be shot down in their tracks.*" This, he says, is "*ambiguous*," that is, may apply to the one side as well as to the other, and "*some*" are left, he says, to believe that it may "apply to the government of the Confederate States." He will not permit any one to put words of this character in his mouth, that will apply equally to one side or the other, or that any one can apply to the government of the Con-



federate States. That is not the "neutrality" he is striving for, and therefore he corrects it in these words:

What I did say was this:

Not one man or one dollar will Kentucky furnish *Lincoln* to aid him in his *unholy war against the South*. If this *northern army* shall attempt to cross our borders, we will resist it unto the death; and if one man shall be found in our Commonwealth to volunteer to join them, he ought, and I believe will, be shot down before he leaves the State.

Understand me, fellow-citizens of Kentucky. This is my position: "Not one man or one dollar will Kentucky furnish *Lincoln* to aid him in his *unholy war against the South*." Mind you, no one has a right to "construe my language to apply to the confederate government." "If this *northern army*"—take notice, I say *northern army*; no one has a right to apply my language to the *southern army*—"if this northern army shall attempt to cross our borders, we will resist it unto death, and if one man shall be found in our Commonwealth to volunteer to join them"—don't mistake me, I use no "*ambiguous*" language—"if any man volunteer to join the *northern army*, he ought, and I believe he will, be shot down before he leaves the State."

The committee cannot understand how such language can be used to assure the people that its author was *neutral*. It is of opinion that it does not admit of such a construction, but, on the other hand, will bear no other interpretation but that of deadly hostility to the Union, and the threatening with assassination every one in the State that should go to its support. If language had been sought for to best assure the people beyond the possibility of doubt that enlistment in the rebel army would be safe, but that death would follow support of the Union cause, it could not have been more fitly chosen.

Nor does any contemporaneous act of Mr. Brown, nor any of the surrounding circumstances which have been shown to the committee, relieve this language of this its natural and obvious import. The attention of the committee has been called to the fact that Mr. Brown, on the day of the date of this letter, addressed a large and enthusiastic Union meeting in Louisville. And the question is asked: Would he, on the very day that letter was written, in the very town where it was published, have made a Union speech if this letter was truly in aid of treason? All that is known of that meeting by the committee is derived from the account of it annexed to this report, furnished by Mr. Brown from a paper of the next day. It does not appear from this account that Mr. Brown made a Union speech at all. But one speech is reported in this account—that of Mr. Dixon. Only the editor's account of the oratorical achievement of Mr. Brown is given, and no attempt to furnish a word he uttered. His burden was "the history of the last Congress," "the efforts for compromise," "the surrender by the republicans of the fundamental idea of the Chicago platform, the positive non-extension of slavery in the formation of the new Territories." We are informed that "he held his audience spell-bound, as it were, for more than an hour, as he poured out burning words of indignation upon those who have brought the country into its present unfortunate condition, or depicted the horrors of civil war." But who, in the opinion of Mr. Brown, were the guilty authors of these calamities, this account does not inform us. This is left all uncertain, and the language is far more "ambiguous" than the report of the remarks which called out the letter under consideration. The traitors themselves left the halls of Congress, charging upon Union men the responsibility and the calamities of the impending civil war. This account of Mr. Brown's speech leaves it altogether uncertain whether he is not using their language. It certainly sheds no favorable



light upon the true meaning of his letter. It is well to keep in mind that, though the letter bears date the same day of this meeting, (April 18,) it did not meet the public eye until May 15, a month after; so that no inference can be drawn from the coincidence of dates.

Nor does the card of Mr. Brown, announcing himself as a candidate for re-election to Congress, to which the attention of the committee has also been called, aid in the slightest degree the effort of Mr. Brown to relieve himself from the natural import of this letter. If reference is had to this card, it will be observed that he does not announce himself as the "Union" candidate, nor is there the slightest allusion to the Union in it. The ominous silence of the card, instead of relieving, weighs heavily against him. It does not seem possible that love for the Union, if it had existed, could have been trained into silence upon offering himself as a candidate for the suffrages of his fellow-citizens at such a crisis and for such a trust. But the card is not altogether silent upon the subject of his "opinions."

He says:

My opinions are the same as heretofore expressed in public speeches made in seven counties of the district.

What those speeches were he has himself furnished us the only account in the very letter under consideration. He said the sentiments of this letter were the sentiments of those speeches.

This was not said in reply to any question propounded by ex-Governor Helm, as you have stated, and is no more than *I frequently uttered publicly and privately* prior to my debate with him.

And what were those sentiments which he had so "frequently uttered publicly?" They are as follows:

Not one man or one dollar will Kentucky furnish *Lincoln* to aid him in his *unholy war against the South*. If this *northern army* shall attempt to cross our borders, *we will resist it unto the death*; and if one man shall be found in our Commonwealth to volunteer to join them, *he ought, and I believe will, be shot down before he leaves the State*.

It is worthy of note that the card bears date May 13, 1861, and this letter was published in the Louisville Courier on the 15th, two days after; and although the newspapers of the 13th, which contained the card, and whose notices of it he has asked us to read, expressed the opinion that he would be "chosen by acclamation," yet after the publication, two days later, of this letter in the Louisville Courier, an avowed secession paper, to whose editors it was addressed, Mr. Brown disappeared altogether from the canvass, and another was chosen as the Union candidate to succeed him in Congress.

The committee cannot avoid the force of another consideration in this connection. Mr. Brown himself, so far as is shown, never, till the hearing before the committee, put upon this letter the construction now claimed for it. As late as during the canvass for the seat now claimed, in April last, it was publicly charged upon him as a treasonable document, and nowhere, as far as the committee can learn, did he disavow the plain import of the words or claim for them any other interpretation, but, on the other hand, received the plaudits of rebel sympathizers upon his announcement that the letter still expressed his sentiments.

The committee have not been able to find, either in the letter itself or in anything said or done by Mr. Brown at the time or since, evidence that leads or tends to any other conclusion than that the letter was a promise of impunity to those who would support the rebel cause, and a threat of death to those who espoused the cause of the Union. Unfortunately, the very evidence offered in exculpation, and which is here being commented on, strengthens that conclusion.

It only remains to inquire whether the letter, with this manifest



interpretation and intent, did "give aid, countenance, counsel, or encouragement to persons engaged in armed hostility to the United States." And this seems so plain as hardly to justify argument. But the committee would fall short of its duty in presenting this whole case if they failed to call attention to the time when this letter was written and the circumstances to which it applied. The letter bears date April 18, 1861, and was addressed to and published in a paper openly advocating war upon the nation, rather than in either of the two Union papers of Louisville. Sumter had been fired upon six days before; President Lincoln had three days before called on the governors of States for seventy-five thousand volunteers, to put down the rebellion; Governor Magoffin, of Kentucky, had replied, "I say emphatically Kentucky will furnish no troops for the wicked purpose of subduing her sister Southern States;" the nation had been aroused; the patriotic heart throughout its length and breadth had been stirred, and the appeal had summoned every man to his duty; in Kentucky there was doubt and uncertainty; there was division among her leading men, the public mind was excited and sensitive in the extreme, and the mass of her people were wavering. Under these circumstances and in this condition of things Mr. Brown, one of her young and popular orators, gifted and influential, returns from the halls of Congress, and, almost in the same language with which her governor had hurled back his treasonable response to President Lincoln's proclamation, declares, "publicly and privately," to the doubting and hesitating among his fellow-citizens, that—

Not one man or one dollar will Kentucky furnish *Lincoln* to aid *him* in his *unholy war against the South*. If this *northern army* shall attempt to cross our borders, *we will resist it unto the death*; and if one man shall be found in our commonwealth to volunteer to join them, *he ought*, and I believe will, be *shot down before he leaves the State*.

How much of the blood that subsequently flowed upon the soil of Kentucky is justly attributable to these sentiments thus uttered will never be known. But it was a pledge of impunity for murder; it stimulated thirst for the blood of Union soldiers, and there followed the blackest crimes, not against country alone, but against humanity. The letter also discloses that he had *privately* avowed these atrocious sentiments. It is no less than a confession that he had *secretly* urged the assassination of Union soldiers, while promising to shield the confederate, thus encouraging, stimulating, and setting on foot the guerilla warfare which subsequently raged with such infamous cruelty in many parts of Kentucky. The committee are forced to believe that Mr. Brown, in manner and form herein set forth, has contributed to these terrible results, and that therein having "voluntarily given aid, countenance, counsel, and encouragement to persons engaged in armed hostility to the United States," he is not entitled to take the oath of office or to be admitted to this House as a representative from the State of Kentucky.

SAMUEL E. SMITH.

The claim of Mr. Smith to the seat is not based upon any alleged majority of the votes cast for representative in Congress. The vote at the election here contested was as follows:

For Mr. Brown .....	8,922
For Mr. Smith .....	2,816
For Mr. B. C. Ritter .....	1,555

The majority for Mr. Brown over Mr. Smith was, therefore, 6,106 votes.



Mr. Smith rests his claim to the seat solely upon what he alleges is a legal result, following from the conclusion to which the committee have arrived, that Mr. Brown, who did receive a majority of the votes, is not entitled to take the oath of office or to hold the seat. He says that it is a conclusion of law that when the candidate who has received the highest number of votes is ineligible, and that ineligibility was known to those who voted for him before casting their votes, that those votes thus cast for him are to be thrown away and treated as if never cast, and consequently the minority candidate would be elected. In support of this claim, he calls the attention of the committee to a large number of cases in the Parliament and courts of Great Britain sustaining this doctrine, and insists upon its application to the cases now under consideration. The committee are not disposed to controvert the existence of the authorities cited, but are led to inquire how far they furnish a binding or a wise rule for the government of the House upon this occasion. But before entering upon this inquiry it is proper to settle another question standing in front of this: Would the application of the English rule invoked by Mr. Smith to the facts in this case give the seat to him? This rule rests for its whole foundation upon the fact that the voter *had knowledge* of the ineligibility of his candidate before casting his vote for him.

Heywood, on County Elections, page 535, says:

If, before the election comes on or a majority has polled, *sufficient notice has been publicly given of his disability*, the unsuccessful candidate next to him on the poll must ultimately be the sitting member.

Male, on Elections, page 336, says:

If an election is made of a person or persons ineligible, such election is void, *where that ineligibility is clear, and pointed out to the electors at the poll.*

In the case of *King vs. Hawkins*, 10 East., 210, Lord Ellenborough says that such is the law in England, "*after notice of ineligibility.*" In *Claridge vs. Evelyn*, 5 B. and A., page 8, Abbot, C. J., says:

I am of the opinion, therefore, that he (the infant) was ineligible, *and, due notice of his incapacity having been given to the electors at the time of the election*, their votes are thrown away.

Clerke on Election Committees is equally explicit, (page 156:)

Whenever a candidate is disqualified from sitting in Parliament, *and notice thereof is publicly given to the electors*, all votes given to such disqualified candidate will be considered as thrown away.

And the last two cases in the British Parliament, in 1848, were decided, one in conformity to this rule and the other against it, because in the one the committee deemed the notice sufficient, and in the other defective, (see printed minutes, 1848.) Indeed, the reason of the rule itself, as laid down by Mr. Heywood, whose work has been already cited, viz, "that it is *willful obstinacy and misconduct* in a voter to give his vote for a person laboring under a *known incapacity*," (Southwark Elections, page 259,) requires notice, for it cannot be "*willful obstinacy and misconduct*" without notice.

Parliament required this notice to be exceedingly formal, and in almost every instance at the polls; so that the voter who, by their theory, was himself committing a crime to be punished, could be shown to have committed the act, as all crimes are committed, with an *intention* to commit the offense. Then the ineligibility was one fixed by statute upon the candidate, and not one which is a result or inference of law arising from some alleged facts, about the existence of which, or the result arising from them, there could be dispute, such as nonage, alienage, conviction of bribery, &c.



Now, if it be admitted that this is the rule of law in this country as well as in Great Britain, the facts do not bring this case within it. No such notice as the British Parliament required was given to the electors at the polls in the twelve counties composing this district. Indeed, it does not appear that any notice at all of any alleged ineligibility was given at a single poll. The most that can be claimed, by way of notice, is the alleged notoriety of certain facts, viz, the publication of the letter, which, it is claimed, was evidence from which ineligibility could be *inferred* by the voter. But how notorious were even these facts? The letter was published in 1861—six years before the election; it was reproduced on the stump; but in how many of these counties, in the hearing of how many of the very men who afterward, on election day, cast their votes for Mr. Brown, does not appear. It must also be remembered that what would be the legal result arising from these facts was never made certain before the votes. That result depended upon the purpose for which the letter was written, and its effect—all matters of proof and matters at all times in dispute before the voters, and about which even this committee itself, with a better opportunity than any voter ever had to investigate and examine all the evidence, are now, after a full hearing, as nearly equally divided as possible. How can it be said, then, that any voter, in casting his ballot for Mr. Brown, has been guilty of "*willful misconduct and obstinacy*" by casting a vote for one known to be ineligible? Mr. Heywood says that, in England, "it is not so in a doubtful case." (Southwark Elections, p. 259.) If, then, it be admitted that this English rule was a law binding on this House, still it would not avail Mr. Smith in this case, for the facts do not bring the case within the rule.

But the committee do not find any such law regulating elections in this country, in either branch of Congress, or in any State legislature, as far as they have been able to examine. Their attention has been called to no case, and it was not claimed before the committee that, as yet, this rule, by which one receiving only a minority of the votes actually cast had been adjudged elected, had ever been applied in this country.

On the other hand, there have been many cases of alleged ineligibility in both branches of Congress since the formation of the government, in some of which seats have been declared vacant on that ground, and in which, had there existed in this country any such rule, it would certainly have been resorted to. The very first contested election, at the first session of the first Congress, in 1789, *Ramsey vs. Smith*, (1 Con. El., p. 23,) was based on alleged ineligibility. The case was very ably and elaborately debated by Mr. Madison and others, and neither Ramsey, nor any one in his behalf, claimed for a moment that the ineligibility of Smith, who had received a majority of the votes, elected Ramsey, the minority candidate.

In 1793, Albert Gallatin was elected a senator from Pennsylvania before he had been nine years a citizen of the United States. After a very lengthy discussion, (1 Con. El., 851,) his seat was declared *vacant*. In 1807, (1 Con. El., 224,) sundry electors of Maryland memorialized Congress to declare vacant the seat of Philip Barton Key, one of the representatives from that State, because of alleged ineligibility arising from non-residence. Much time of the House was occupied in deciding the case, but no one appeared or found an advocate as a minority candidate. In 1824, on a like memorial, the seat of John Bailey, of Massachusetts, was, for a like ineligibility, declared vacant, and a new election ordered, without a claim on the part of, or in behalf of, a minority candidate. In 1849, the seat of James Shields, a senator from Illinois, was declared



vacant because of ineligibility, and the right of a minority candidate was not even raised. And Mr. Brown himself was elected to the thirty-sixth Congress before he had reached the age of twenty-five years, and therefore when he was ineligible and could not take the oath of office. At the opening of that Congress there was a protracted struggle for power, and the organization of the House was not effected for several months, often failing for lack of a single vote. There was a very strong temptation in every quarter to secure every possible vote; yet not only did no one appear to claim, or was the claim made in behalf of any one as a minority candidate, that votes cast for Mr. Brown were to be thrown away and himself seated in his place; but at the second session, Mr. Brown, having become of age, took his seat, unchallenged, by force of the very votes cast for him when he was, in fact, ineligible. In very many other cases, ineligibility has been discussed and passed upon without ever mooted the question now under consideration.

If any such rule as is now claimed, by which a candidate with a minority of the votes is put in a seat vacated for ineligibility, had ever obtained foothold in this country, this uniform current of decisions could not have run undisturbed through all Congresses from 1789 till the present time.

The attention of the committee has been called to no case in any other legislative body in this country where the rule now contended for has been adopted. Mr. Luther S. Cushing, in his *Treatise on Parliamentary Law and Practice*, after stating, at page 66, the rule to be in England as here claimed and admitted, and after citing very faithfully the English cases in support of his statement, expresses his own opinion to be that the same rule exists in this country; but he cites no case and no authority in support of his opinion, and it is not believed that any exists. No stronger evidence of their non-existence than Mr. Cushing's failure to cite them need be produced. The citations already made show that no such rule has been adopted in this country.

The committee are of opinion that a recurrence to the origin and history of this rule in the British Parliament will show the impossibility of its application to a case in the American House of Representatives. Parliament has no limitation of written constitution upon its powers. Sir Edward Coke says that "its power and jurisdiction are so transcendent and absolute that it cannot be confined, either for causes or persons, within any bounds." Blackstone says, "it hath sovereign and uncontrollable authority in making, conforming, enlarging, restraining, abrogating, repealing, reviewing, and expounding of laws concerning matters of all possible denominations—ecclesiastical or temporal, civil, military, maritime, or criminal—this being the place where that absolute despotic power which must, in all governments, reside somewhere, is intrusted by the constitution of these kingdoms." And either House of Parliament may, upon proof of any crime, adjudge any member disabled and incapable to sit as a member. (1 Black. Com., p. 163.) With this power, called by some *omnipotent*, Parliament grants and takes away the right to vote at its pleasure, erects and destroys constituencies when and where it pleases. If there has been bribery at an election, it sometimes fines and sometimes disfranchises a whole constituency. Indeed, it is not the theory of the British government that power originates with the people. In theory, the right of the monarch is a divine right and he has graciously *conceded* from time to time to the people whatever share in the government they possess. It matters not to the theory that the people, in point of fact, wrenched all this power out of the hands of the monarch; the conclusion is very easy that what has been conceded to the people can,



at pleasure, be modified, limited, or even taken away. Parliament has, therefore, exercised its *omnipotence* with an exceedingly lavish hand in the matter of elections to its own body, declaring by statute Geo. II, ch. 24, that "the right of voting for the future shall be allowed according to the last determination of the House of Commons concerning it," and by 34 Geo. III, ch. 83, "that all decisions of committees of the House of Commons, with respect to the right of election, or of choosing or appointing the returning officer, shall be final and conclusive upon the subject forever." Thus they have made the rule here contended for a statute of the realm.

There certainly can be no need of argument to show that such law can find no place in our system, or occasion to contrast the limited powers of the House of Representatives with the "omnipotence" of Parliament. As Congress, much less the House of Representatives, never conceded, never having the power to concede, to a voter his right to the ballot, neither can it take it away, modify, or limit it. Least of all can this body, the House alone, punish a voter for "obstinacy" or "perversity" in the exercise of his right. This house can only be "the judge of the election, returns and qualifications of its members," that is, can judge whether each member has been elected according to the laws of his State and possesses the qualifications fixed by the Constitution. Here its power begins and ends. It cannot touch a voter or prescribe how he shall vote, nor can it impose a penalty on him, much less disfranchise him or say what shall be the effect or the power of his ballot if it be cast in a particular way. The laws of the State determine this. It is unnecessary to discuss how far both houses by a law can interfere under that clause of the Constitution which says that "the time, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations." It is enough to say that Congress never has touched those regulations, but has left them as made by the States. Both houses have always absolutely conformed, in the effect to be given to the ballot, to the law of the State. To such extent has it been carried that the Senate has rejected a claimant to a seat who had twenty-nine votes to twenty-nine blanks, because there was a law of the State defining the power of each ballot by prescribing that, to be elected senator, one must have not only a majority of all the votes cast, but also a majority of all the members elected to the legislature, (2 Contested Elections, 608,) and there happened to have been sixty members elected to that legislature; and this house has, in obedience to a law of the State of Delaware, rejected votes and given the seat to a contestant, because four votes had only the name of the sitting member on them, when the law required each voter, though there was but one representative to be elected, to put two names on his ballot of two persons residing in different counties of the State. (1 Contested Elections, 69.) Some States have required a majority of all votes cast for an election, some a plurality alone, some a plurality after one or more unsuccessful attempts. The statute books of the States are full of provisions touching elections, extending as well to the effect and power of each ballot as to the manner of depositing it, all of which are a rule for this house. Congress has not seen fit to enact any law concerning it if it had the power. It is not necessary to inquire whether Kentucky might not provide by law that votes cast for one known to be ineligible shall be thrown away, and one who has received a minority of the votes only shall be declared elected. It is enough to say that that State has not only never passed such a law, but it has enacted by statute that no one shall be declared elected



who has not received a majority of the votes cast. As has been shown, Parliament did enact a law that votes cast for one ineligible shall be treated as if not cast, and one having a minority only of the votes be thus elected. But neither has Congress nor Kentucky enacted any such law; much less can this house alone, by a resolution, set it up, and that too *after the fact*, as a punishment for "willful obstinacy and misconduct." The right of representation is a sacred right, which cannot be taken away from the majority. That majority, by perversely persisting in casting its vote for one ineligible, can lose representation, but never the *right* to representation while the Constitution and the State government shall endure. If it be inquired whether a loyal minority have not rights which are thus extinguished, the answer is obvious. If all are legal voters the right of one is no greater than that of another; nor is it a valid objection that by this rule one district after another might be left without a representative until representation itself might be destroyed. The Constitution has given into the hands of Congress power by law to make, alter, or amend all regulations as to the times, places, and manner of electing representatives. If this is power enough to meet the exigency, it will be met when it arises. If there is not power enough, then it cannot be found in that instrument. When Congress has by law thus regulated elections, this house can, by resolution, conform its actions thereto, but not till then.

The committee are therefore of opinion that the case does not come within the law of the British Parliament, for want of a sufficient notice to the electors at the polls of an ineligibility, known and fixed by law; that the law of the British Parliament in this particular has never been adopted in this country, and is wholly inapplicable to the system of government under which we live.

The will of the majority, expressed in conformity with established law, is the very basis on which rest the foundations of our institutions, and any attempt to substitute therefor the will of a minority is an attack upon the fundamental principles of the government, and if successful will prove their overthrow. The committee shrink from this attack, and therefore they recommend the adoption of the following resolution:

*Resolved*, That John Young Brown, having voluntarily given aid, countenance, counsel, and encouragement to persons engaged in armed hostility to the United States, is not entitled to take the oath of office as a representative in this house from the second congressional district of Kentucky, or to hold a seat therein as such representative.

*Resolved*, That Samuel E. Smith, not having received a majority of the votes cast for representative in this house from the second congressional district of Kentucky, is not entitled to a seat therein as such representative.

*Resolved*, That the Speaker be directed to notify the governor of Kentucky that a vacancy exists in the representation in this house from the second congressional district of Kentucky.

---

#### MINORITY REPORT.

MR. SPEAKER: A minority of the Committee of Elections are unable to concur in the report of the majority in the case of John Young Brown, a member elect to this house from the second district of Kentucky, whose seat is contested by Samuel E. Smith, and they respectfully submit the following statement:

At the election in that district on May 4, 1867, B. C. Ritter received



1,555 votes, S. E. Smith 2,816 votes, and John Young Brown 8,922 votes, making Brown's majority over Smith 6,106 votes. Mr. Smith, in his notice, assigns several grounds of contest, but in the case made by him before the committee he denies Brown's right to the seat, and demands it for himself, upon the sole ground of Brown's alleged disloyalty.

At the time of the election Mr. Brown possessed every qualification for a representative in Congress which is expressly prescribed in the Constitution of the United States. No law of Congress or of the commonwealth of Kentucky declared him ineligible or incompetent to be voted for and elected to that office. He possessed no personal or physical disqualification patent to the electors of his district which could amount to legal notice to them that he could in no event be admitted to a seat in Congress. The votes cast for him, therefore, can upon no principle of law or justice be rejected, or treated as blanks or nullities. And, therefore, the seat cannot be awarded to Mr. Smith, even if it be withheld from Mr. Brown.

The chief purpose designed to be accomplished by the oath of office required to be taken by members of Congress, so far as that oath was modified and added to by the law of July 2, 1862, is obviously the exclusion from Congress of persons who have committed the high crime of treason against the United States. The material additions to the oath are couched in language manifestly intended to embrace that crime alone as it is defined in the Constitution. The member is required to swear—

That I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted nor attempted to exercise the functions of any office whatever under any authority or pretended authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution, within the United States, hostile or inimical thereto.

Intentionally waiving the expression of any opinion touching the validity of this oath itself, we submit that it interposes no bar to the admission of any member to a seat if he possesses the constitutional qualifications for membership, except his guilt of the crime of treason against the United States. It is not sufficient that he be guilty of *constructive* treason, because, happily for our country, that kind of treason was entirely exorcised from our system of government by the wisdom of its authors. It has left such indelible evidences of its inherent viciousness and dangers in the history of other countries that Mr. Justice Story has well remarked, that "it was under the influence of these admonitions, furnished by history and human experience, that the convention deemed it necessary to interpose an impassable barrier against arbitrary constructions, either by the courts or by Congress, upon the crime of treason."

It follows, then, that the duty now devolved upon this house is no less delicate and solemn than that of the trial of Mr. Brown upon an indictment for treason against his country. The determination of his guilt or innocence of this crime will determine the question of his admission or rejection as the representative of the second district of Kentucky. It is an issue of vital importance to him, and entitles him to the benefit of every rule of law and evidence designed in the administration of criminal justice to protect the innocent and prevent injustice. These rules impose upon the prosecutor in this case the burden of proving the truth of the charge against Mr. Brown beyond a reasonable doubt. Has he done it? Keeping in view the principles to which we have



referred, we proceed to consider the case made against Mr. Brown by the evidence.

The prosecution produced and examined six witnesses. The first, Mr. Langley, swears that he knows no act of personal disloyalty on the part of Mr. Brown; that he was, in 1861, in favor of what was called the neutrality of Kentucky; that he opposed coercion and secession; that he never knew him to advise any one to go into the rebel army; that he was *considered* by Union men as belonging to the disloyal party and as being a disloyal man; that he considered his letter to the Louisville Courier disloyal; and that his failure to retract it, and his attempted justification of it, made the witness believe him to be identified with what he *called* the disloyal party; and that the following is a copy of that letter:

[From the Louisville Courier, May 15, 1861.]

ELIZABETHTOWN, April 18, 1861.

*Editors Louisville Courier:*

My attention has been called to the following paragraph which appeared in your paper of this date:

"JOHN YOUNG BROWN'S POSITION.—This gentleman, in reply to some searching interrogatories put to him by Governor Helm, said, in reference to the call of the President for four regiments of volunteers to march against the South—

"I would not send one solitary man to aid that government, and those who volunteer should be shot down in their tracks."

This ambiguous report of my remarks has, I find, been misunderstood by some who have read it, who construe my language to apply to the government of the confederate States. What I did say was this:

"Not one man or one dollar will Kentucky furnish Lincoln to aid him in his unholy war against the South. If this northern army shall attempt to cross our borders, we will resist it unto the death; and if one man shall be found in our commonwealth to volunteer to join them, he ought, and I believe will, be shot down before he leaves the State."

This was not said in reply to any question propounded by ex-Governor Helm, as you have stated, and is no more than I frequently uttered, publicly and privately, prior to my debate with him.

Respectfully,

JOHN YOUNG BROWN.

The second witness, Mr. Little, testifies in substantially the same manner and to the same effect; and that Mr. Brown in his speeches, in 1867, when a candidate for Congress, justified that letter by saying that he wrote it as a Union man, and that he was at the time acting in harmony with all the prominent Union men of Kentucky, to prove which he cited the positions at the date of that letter of Mr. Prentice, of the Louisville Journal, Colonel Harney, of the Louisville Democrat—both Union papers—Senator Guthrie, General Rousseau, ex-Attorney General Speed, and others, all Union men.

The third witness, Mr. Park, testifies that he has known Mr. Brown all his life; that he knew personally nothing about his politics during the war, and that the Union men *looked on him* as belonging to the disloyal party; that he never knew him to do anything to aid the rebellion, and believed him in April, 1861, to be a Union man, but subsequently to be in sympathy and political opinion with the South; and formed his opinions of Mr. Brown in these matters from what others said of him.

The fourth witness, Mr. Reno, testifies that he heard Mr. Brown in 1867 make a speech with Ritter and Smith, and that he admitted he wrote that Courier letter, and said it amounted to nothing, and that when he wrote it Governor Helm was advocating the cause of secession, and he of the Union, and that at that time he was young and his blood was hot, and he might have said more than he meant; and that he



justified it by reference to the conduct and published opinions of prominent Union men in Kentucky at the time it was written; and that he never heard of Mr. Brown discouraging enlistments in the federal army, or encouraging enlistments in the confederate army.

The fifth witness, Mr. Hicks, testifies that in 1865, after the war was over, he heard Mr. Brown make a speech at Hibbardsville, in Kentucky, which he considered disloyal; that he heard him make another speech in 1867, in which he said he wrote that letter as a Union man, and at the time occupied the same position which Senator Guthrie, Mr. Speed, General Rousseau, and all the leading Union men of Kentucky then occupied on the question of Kentucky neutrality; and that he never knew him, directly or indirectly, to encourage enlistments in the confederate service, but that he, (witness,) from hearsay, and without any personal knowledge of the facts, believed Mr. Brown belonged during the war to the rebel party.

The last witness, Mr. McIntire, testifies that he heard Mr. Brown make speeches in 1866 and 1867, in which he condemned the policy of the dominant party in the country, admitted he wrote the Courier letter, and explained it as before; and that he was considered a rebel sympathizer in some parts of the second district.

Such is the case made by the prosecution against Mr. Brown. It is a significant and most material fact that most of the testimony relates to times and transactions subsequent to the close of the war, and consists in mere opinions, often based alone upon hearsay or rumor, which would not be admissible in any intelligent court of justice in the country as evidence against any person charged with crime. It is entitled to no consideration in this case. It only tends to establish the fact that, during the last two or three years, in the second district of Kentucky, political and partisan animosities have been very bitter and intense, and have led men of all parties to indulge in exceedingly intemperate language. It utterly fails to establish any substantive treasonable act against Mr. Brown prior to or during the war, unless that letter of April 18, 1861, constitutes such an *act*.

It becomes a matter of the utmost importance, therefore, in order to arrive at a just conclusion in this case, to determine the true legal character of that *act*. Was it written with the wicked intent to aid the enemies of the country, to encourage rebellion, to commit treason, the highest crime known to human laws? This grave question can only be answered justly or intelligently after a fair and full consideration of all the circumstances under which it was written. Those circumstances cannot be learned alone from the printed evidence in this case. They must be gathered from the printed record and the public history of the times. The condition of Kentucky for some time before and after the writing of that letter was exceedingly anomalous. She occupied a geographical position between the two contending sections. Her sympathies, by reason of her local institutions, her political traditions, the pursuits of her people, and the ties of kindred and nativity, ran out very strongly and most naturally toward the South. Her ablest statesmen and her best and purest citizens were led to believe, upon reasons and motives the intrinsic propriety and justice of which it were impossible for us now fully to appreciate, that they could best promote the peace and welfare of Kentucky and of the Union by assuming an attitude of neutrality between the North and South. As an abstract question such a position may be considered indefensible. But, at the same time, it would do great injustice to the people of Kentucky to assume that it was adopted from unpatriotic or treasonable motives.



.. Very early in 1861 it was adopted by her public men, by her legislature, and by her popular assemblies, and remained for some time the policy of the State. We will cite a few extracts and resolutions from the history of the times to indicate the spirit and motives which controlled the people of Kentucky in the early part of 1861.

There was a very large meeting of Union men, said to have numbered five thousand, held in the city of Louisville, on April 18, 1861, which was addressed by Senator Guthrie, ex-Senator Dixon, John Young Brown, Judge Bullock, and others, in speeches which were characterized by the papers as being very able, and distinctly and unequivocally loyal. That meeting adopted with great unanimity, in connection with others, the following resolutions:

3. That as we oppose the call of the President for volunteers for the purpose of coercing the seceded States, so we oppose the raising of troops in this State to co-operate with the southern confederacy. \* \* \*

4. That the present duty of Kentucky is to maintain her present independent position, taking sides not with the administration nor with the seceding States, but with the Union against them both, declaring her soil to be sacred from the hostile tread of either, and, if necessary, to make the declaration good with her strong right arm.

In his earnest and fervid speech on that occasion, Senator Guthrie said:

If the North comes to ravage our land, we will meet them as Kentuckians always meet their foes. We will meet them as Kentuckians should meet them, so long as there is a tree for a fortification or a foot of land for a freeman to stand upon.

On the day before that Union meeting, April 17, 1861, the Union Central Committee of Kentucky issued an address to the people of the State, signed by such unwavering Union men and distinguished citizens as John H. Harney, editor of the Louisville Democrat; George D. Prentice, editor of the Louisville Journal, both leading and zealous Union papers; Judge Wm. F. Bullock, James Speed, (since Attorney General,) Charles Ripley, Wm. P. Boone, Philip Tompert, Hamilton Pope, Nat. Wolfe, and L. E. Harvie, in which occur the following passages:

The government of the Union has appealed to her (Kentucky) to furnish men to suppress the revolutionary combinations in the cotton States. She has refused; she has most wisely and justly refused. Seditious leaders in our midst now appeal to her to furnish men to uphold those combinations against the government and the Union. Will she comply with this appeal? Ought she to comply with it? We answer, with emphasis, No.

\* \* \* The present duty of Kentucky is to maintain her present independent position, taking sides not with the government and not with the seceding States, but with the Union against them both, declaring her soil to be sacred from the hostile tread of either, and, if necessary, make the declaration good with her strong right arm. \* \* \* What the future duty of Kentucky may be, we, of course, cannot with certainty foresee; but if the enterprise announced in the proclamation of the President should at any time hereafter assume the aspect of a war for the overthrow and subjugation of the seceding States, through the full assertion therein of the national jurisdiction by a standing military force, we do not hesitate to say that Kentucky should promptly unsheathe her sword in behalf of what will have then become her common cause.

The legislature of Kentucky, in May, 1861, by resolutions, indorsed, in the most direct and positive manner, both the doctrine of neutrality and the refusal of the governor to furnish troops. This conduct on the part of the State of Kentucky and her people was well understood by the country at large and by the administration at Washington. Near the last of April, 1861, Hon. W. L. Underwood, one of the most distinguished Union men of the State, visited President Lincoln, in this Capitol, to consult with him in the interests of peace and union, and especially to aid in keeping Kentucky out of secession; and he wrote home to his people a letter, in which the following statement is made:

In reference to Kentucky, Mr. Lincoln told me he hoped Kentucky would stand by



the government in the present difficulties; but if she would not, then let her stand still and take no hostile part against it, and that no hostile step should tread her soil.

About the same time, Senator Garrett Davis, who had come to Washington to consult in the same interests, wrote back to Mr. Prentice a letter for publication, under date of April 28, 1861, in which he assured the people of Kentucky that the President had no desire to invade or disturb Kentucky, and "that if Kentucky made no demonstration of force against the United States, he would not molest her."

In the latter part of May, 1861, what was called the Border State Convention met at Frankfort, Kentucky, composed of representatives from Kentucky, Missouri, and Tennessee, and was presided over by the venerable patriot, John J. Crittenden. They issued an address to the people of the United States, signed by Mr. Crittenden, James Guthrie, H. R. Gamble, (since governor of Missouri,) W. A. Hall, J. B. Henderson, (now senator in Congress from Missouri,) Wm. G. Pomeroy, R. K. Williams, Archibald Dixon, F. M. Bristow, Joshua F. Bell, C. A. Wickliffe, G. W. Dunlap, J. F. Robinson, (afterward governor of Kentucky as successor to Governor Magoffin,) John B. Huston, and others, in which we find the following passage:

Our States desire and have indicated a purpose to take no part in this war, and we believe that in this course we will ultimately best serve the interests of our common country. It is impossible that we should be indifferent spectators. We consider that our interests would be irretrievably ruined by taking part in the conflict on the side where the strongest sympathies of our people are, and that our sense of honor and of duty requires that we should not allow ourselves to be drawn or driven into a war in which other States, without consulting us, have deliberately chosen to involve themselves. Our safety and our dignity, as among the most powerful of the slave States, demand of us that we take this position.

At the same time the delegates to that convention from Kentucky issued an address, signed by themselves, to the people of Kentucky, from which we extract the following:

Your State, on a deliberate consideration of her responsibilities, moral, political, and social, has determined that the proper course for her to pursue is to take no part in the controversy between the government and the seceded States but that of mediator and intercessor. She is unwilling to take up arms against her brethren residing either north or south of the geographical line by which they are unhappily divided into warring sections.

Feeling that she is clearly right in this, and has announced her intention to refrain from aggression upon others, she must protest against her soil being made the theater of military operations by any belligerent; the war must not be transferred by the warring sections from their own to her borders.

Governor James F. Robinson, one of the most earnest and unconditionally loyal men in Kentucky, declares under oath, in his testimony in Mr. Beck's case, that early in 1861 neutrality was the avowed and solemnly adopted policy of all parties in the State, and says:

In truth and in fact I always thought neutrality in Kentucky a humbug, and I think so still. Yet I believe that it was a matter of necessity at the time. I believe that if they had not taken that ground, but had come out boldly and taken the ground that we should take up arms and conquer the South, the State would have gone head and tail for secession. The old men were held on the doctrine of neutrality. It was a pleasant doctrine—peace for the present; that we would be peacemakers and bring about a better state of things.

These citations, made from the action of all the recognized organs of popular sentiment in Kentucky in the early part of 1861, before and after the date of Mr. Brown's letter, establish beyond a question, that the minds and hearts of the people of the State were fully possessed and controlled by the idea of neutrality, of keeping both contending parties out of the State, and becoming a sort of mediator between them. The action of Mr. Brown should be construed and judged with constant reference to these pervading ideas and controlling circumstances. The



record shows that very many of the best, ablest, most patriotic and loyal minds in the State yielded to them, and acted under their dictation in complete harmony, at the time, with Mr. Brown. During that time, not only the country generally, but each individual mind, was in a state of transition, of revolution, of conflict between duty in the abstract and duty as modified in the minds of men by their infinitely diversified circumstances, relations, and sympathies.

We will now revert briefly to the sworn testimony in this case. Mr. Brown introduced in his own behalf six witnesses. They all swear that in 1861, and since, he was a Union man; that he always opposed and denied the right of secession; that he condemned the policy of coercion and the general policy upon which the war was conducted; that he was exceedingly prudent and quiet during the war, and was an orderly and law-abiding citizen. Major W. R. Kinney, himself a distinguished citizen and soldier, and an intimate acquaintance and near neighbor of Mr. Brown, and in politics at the time a radical, says:

I know of his giving no aid to the rebellion. It was understood among Union men there that Mr. Brown was exceedingly prudent in reference to everything connected with the rebellion, and endeavored to keep from being allied with it in any way. \* \* \* It was understood that Mr. Brown was a sympathizer with the South, but I am satisfied, from my own knowledge of him, that he gave no active sympathy to it.

Mr. James Alves, a Union man during the war, says:

I have been always a Union man, and am so still. Mr. Brown has always been a democrat; he has been a very moderate man; I never heard him utter what I considered a disloyal sentiment; he was a man to advise peace and quietness among our citizens; I never knew him to be guilty of a disloyal act to the country; I have heard him frequently state that he was opposed to secession, and thought that was no remedy for any evil; I have been very intimate with him—almost like brothers—and have heard him say frequently that if he could restore the country to what it once was he would willingly give up his life.

Mr. Thomas F. Cheaney, also a Union man, swears that he never regarded Mr. Brown as a rebel, and that he was a very quiet citizen, and that he never knew or heard of him being guilty of a disloyal act to the government; but that he disapproved of the emancipation of the slaves and of the general principles of policy upon which the war was conducted.

Hon. Robert Mallory, a Union man, an ex-member of this house, a colleague in service here with Mr. Brown himself, testifies:

In all our intercourse, during that session, when the question of secession was so much mooted, he was unequivocally opposed to it, and took issue with some of his colleagues in Congress at that time—as I did. He was, with me, a Union man, against the secession of the Southern States, and a total disbeliever, as he said to me on many occasions, in the doctrine of secession, as a constitutional right. \* \* \* I recollect having frequent conversations with Mr. Brown in the spring and summer of 1861, in Kentucky, when that question was rife here; he was a Union man then. I remember a speech he made in Louisville in April, 1861, at the convention, when Mr. Guthrie made what I thought to be rather a wild and rabid speech, of which, I may say, I did not approve. Mr. Brown avowed himself a Union man then, and opposed secession.

In reply to another interrogatory, he said:

Major Lee was right in saying that in 1861 the Union party of Kentucky took the ground of neutrality; and I think you will find that the most rabid speech in favor of it was made by Mr. Speed, our late Attorney General. I think you will find he used the expression that if the federal government sent troops into Kentucky, or undertook to coerce the Southern States, it should be resisted with all the power of which Kentucky was master.

Mr. Philip Lee, who had been in the confederate army, testifies that “early in April, 1861, he was secretly engaged in enlisting men to go into the rebellion, and was openly in favor of secession; that Mr. Brown’s political conduct and speeches then were such as to discourage enlist-



ments in the confederate service; and that it is his recollection that at that time the Union men took ground for neutrality, and that the southern men took violent, open secession ground. I do not think there was, perhaps, any one in Kentucky for coercion at that time."

On April 18, 1861, at the great Union mass meeting, to which reference has already been made, Mr. Brown made a speech, which was characterized by the Union papers in Louisville as exceedingly able and eloquent, in which one of those papers says:

He earnestly urged the neutrality of Kentucky in the present crisis, as the best and most practicable position for Kentucky to maintain her integrity in the Union, and to mediate between the antagonistic sections.

On the 13th of May, 1861, Mr. Brown announced himself as a Union candidate in the fifth congressional district of Kentucky, in which he then lived, for re-election to Congress, and his candidacy was at once responded to by the Union press of the State as in every particular fortunate and desirable. The Louisville Journal at the time, in an exceedingly flattering and eulogistic editorial on the subject, said:

There are other noble Union spirits in the fifth district, but we have no doubt that our friends in that district will, by common consent, hail John Young Brown as their champion in the congressional canvass.

Mr. Brown soon after withdrew from that race and removed from that district, and became a citizen of the district and town in which he now lives, where also his father-in-law, ex-senator Dixon, resides, and Mr. Wickliffe made the canvass for Congress.

The foregoing, although not very full, appears to be a fair and just statement of the case against Mr. Brown. Excepting that letter, there is not a word or a shadow of legal proof that, from the inception of the war to its close, he committed one single act of disloyalty to the government, or gave any active aid, countenance, or sympathy to those engaged in rebellion. He was at all times a quiet citizen, an advocate for order and peace among his own people, and for the restoration of our common country to Union and constitutional government. He is proven by the testimony of all the witnesses who were examined on that subject, and by the history of the times, to have been politically opposed to the then dominant party in the country, and to have disapproved and condemned, privately and publicly, and sometimes in intemperate if not extravagant terms, the political policy and management of that party in the general administration of the government, and in the mode of prosecuting the war.

But, under the spirit and fundamental principles of our government, the utmost liberty of discussion and criticism by the citizens upon the conduct of public affairs is consistent with the highest degree of loyalty to the government itself; and however its exercise may be condemned as indiscreet, imprudent, unwise, or unjust, in any given case, unless it assume the form of actual treasonable acts of opposition to the government, it does not acquire the character of crime in any legal sense. We assume, therefore, that it is not the purpose of this House, in this case, to institute any inquisition into the mere political opinions or conduct of Mr. Brown. If the representatives of the people in this country can be unseated or rejected for the mere intemperance, extravagance, or recklessness of expression which too often does discredit both to our popular and legislative assemblies, then our liberties are in danger. It is no doubt true that Mr. Brown, by the very impulse of his ardent nature, when "his blood was hot," often indulged in such intemperance.

That letter, in our judgment, in the light of all the circumstances, owes its existence to those impulses, and was conceived in no treason-



able intent. There is not the slightest degree of evidence that he ever did an act that tended to attach to that letter such a motive. He never, at any time, in private or public, admitted that it was written with any such intent. He always denied it, and always after explained it by reference to the events, the circumstances, and the conduct of his fellow-citizens, his State, and of all her leading men, in the midst and in the light of which it was conceived and written. As defined by his own subsequent and prior conduct, it simply expressed his devotion to the adopted policy of neutrality, and admits of no other interpretation when considered in connection with all its surroundings.

That letter, when closely scrutinized, cannot be justified as an expression of proper sentiments by any one; but common justice and every rule of interpretation forbid us to forget that, when it was written, Mr. Brown, who had just been engaged in a popular discussion, as an avowed Union man, with Governor Helm, who was an equally avowed advocate of secession, was charged by certain parties with being opposed to *impartial* neutrality on the part of Kentucky, and in favor only of *partial* neutrality as against the South, and that, to *repel that charge*, the letter was written. He had been just before declaring, day by day, to the people of the State that they must not surrender the Union, and that in the then pending struggle, they could best maintain their position in it by assuming and maintaining an attitude of neutrality, and on the very day of its date he made an eloquent speech of the same import, in Louisville, to five thousand Union men. He must have been understood by all intelligent men in Kentucky as then in favor of *impartial* neutrality. But, for some evil purpose, he was misrepresented by certain persons on that subject, and it was *intimated* that he was in favor of northern intervention or invasion. It was this intimation that he wrote that letter to repel or contradict. He seems to have assumed that his public addresses had left no doubt on the public mind that he was in favor of impartial neutrality, and therefore he unwisely neglected to repeat that position specifically in his letter, as he had in his speeches.

The minority, therefore, at the proper time, will offer resolutions as substitutes for the resolutions offered by the majority.

M. C. KERR.

JOHN W. CHANLER.

## APPENDIX.

[From the Louisville Democrat, Friday morning, April 19, 1861.]

GREAT MEETING.—KENTUCKY TO STAND NEUTRAL IN THE UNION.—HANDS OFF ON BOTH SIDES.—FIVE THOUSAND UNION MEN.—ELOQUENT SPEECHES BY HON. JAMES GUTHRIE, EX-SENATOR DIXON, HON JOHN YOUNG BROWN, AND JUDGE BULLOCK.—RESOLUTIONS WORTHY OF KENTUCKY.

One of the grandest and largest public meetings ever held in Louisville filled the great east hall of the court-house last night, in response to a call for a sober expression as to the proper position for Kentucky to assume in the present crisis. It was a splendid meeting, both as regards numbers and material. It was a closely attentive and understanding assemblage, of the best intelligence of the city, and its effect must be wide and wholesome. If the warring sections will but respect Kentucky's position and her advice, all may yet be well, civil war averted, and peace restored. We were more than gratified with the meeting and its works. The stars and stripes were on both sides of the speaker's stand, and were frequently cheered as allusions to the national banner were made.



## MR. DIXON'S SPEECH.

Mr. Dixon rose and advanced amid enthusiastic cheers. Turning to the flags which graced the stand he said:

FELLOW-CITIZENS: Whose flag is that which waves over us? To whom does it belong? Is it not yours, is it not our own stars and stripes, and do we mean ever to abandon it? That flag has ever waved over Kentucky soil with honor and glory. It is our flag—it is *my* flag! It is Kentucky's flag! When that flag is trailed in the dust and destroyed, I pray Heaven that the earth may be destroyed with it, for I do not wish, and I trust I shall never look upon its dishonor. It is our flag—ours while we have a country and a government. I shall never surrender that flag. I have loved it from boyhood, and have watched it everywhere, and imagine it in this dark hour still waving amid the gloom, and feel that its stars will still shine forth in the smoke of battle, and lead our country back to honor and glory! Why is our country so stricken down, and why is our glory shaded in gloom—our Constitution and government destroyed? What cause has brought about all this difference between the North and the South? Some say it was the Territories. Some say the government wars on the South; that Mr. Lincoln was elected as a sectional candidate, and on a principle of hostility to an institution of the South. It is true. But has the *government* ever warred on the South? This contest should be with Mr. Lincoln, and not with that flag—with the Union! It is Lincoln and his party who are the enemies of the country—they are the foes of the Constitution. [Cheers.] It is that party of the North whose purpose is to sever the States. It is with them that we should war, and not with the government—the Union under which we have been so prosperous. Look to the history of the country and tell me has the government ever made war on the South? I boldly affirm that the amendments to the Constitution, which affect the southern interests, have been made at the instance of southern men. Was not the act of 1850 enacted at the instance of southern men, and was it not framed and advocated by our own immortal statesman—Kentucky's noble and gallant Clay? The principle upon which all our Territories have been organized holds that people who owned slaves might take them there, and the Territories could be admitted as slave States. Those acts thus providing are still in force. The South asked for the repeal of the Missouri compromise, and it was done. What next? Even since the inauguration of Mr. Lincoln, his party has given sanction to three new Territories under the same existing laws. All have the right to take their slaves there. What, then, is the cause of our difficulty? Look at it clearly. Is it the tariff? Was it not made as the South wanted it; and was it not South Carolina who changed it? Did not the general government change the then existing value of silver and gold for the benefit of the South? We were told the other day that if Lincoln was elected his intention was to destroy slavery. Did he not declare that the fugitive slave law should be enforced? How has it been done? Were not five slaves only lately taken from Chicago and delivered to their owners? He declares he will enforce the laws, and not interfere with slavery. Then why this war? I will tell you why—because Mr. Lincoln has been elected President of the country, and Mr. Davis could not be, and, therefore, a southern confederacy was to be formed by southern demagogues, and now they are attempting to drag you on with them. That is the plain state of the case. Demagogues at the North and demagogues at the South have divided the country; they would strike the dagger to the hearts of their brothers; they inaugurated the civil war now raging, and wish to drag you on with them.

I say, for my part, I am not to be forced. I will not be driven to desert my country and my country's flag, nor turn to strike my dagger at her heart, but ever stand forward to defend her glory and her honor. What are we to do with South Carolina and her seceded sisters? Do you mean to tell me that they will come back? What if you give them over; will they ever come back? They have turned their backs on their country, and now they want you to march with them. In a just cause I will defend our State at every point and against every combination; but when she battles against the law and the Constitution, I have not the heart—I have not the courage to do it! I cannot do it—I will not do it! Never! strike at that flag of our country—follow Davis to tear down the stars and stripes, the eagle which has soared so high aloft as the emblem of so mighty a nation—give up that flag for the palmetto—strike that eagle from his high place and coil around the stars the rattlesnake! The serpent stole into the garden of Eden and whispered treason to heaven in the ear of Eve. And now the serpent would seduce us from our allegiance to our country. Were it possible for him to coil himself around the flag, I would tear him from the folds and crush him beneath my feet. The rattlesnake for the eagle! If you will follow the serpent your fate will be as Adam's. Measureless woe, for all generations, has been that fate. Hell was created because of that treason to heaven, and if we follow after the serpent our fate will be to sink into the hell of secession. That is the fate which befalls you if you follow Davis. But you must take a position. One side advises us to go out, while some say remain in the Union. They tell us that we are bound to fight, no matter how we may decide. Kentucky is always ready to fight. She was born to fight when necessary,



and when the soil of Kentucky is stained with blood, and the spirit of her sons aroused, let her enemies tremble! But she should ever fight upon the right side.

But why is the Union broken up? Is it not because Lincoln is President? How long is his rule to last? In the history of nations, what is four years? How soon will he be dragged down, and another and a better man raised to his high place? The American people are powerful when they are aroused to action, but they should act calmly. Now they are wild with excitement and act without judgment. What would we do if invaded? We would fly from house to house and rush together, but would we be in any capacity to defend ourselves? Calmness and not excitement should characterize us.

Seven States have seceded, and the general government attempts to enforce the laws. The war commences and blood is shed, and forces are already arrayed against each other in hostile action. If we move out what is our fate? Who is to defend—how are you to defend yourself if you go out of the Union? If you do, you at once declare war against the Union—you oppose the stars and stripes. We have a million of white population resident in a State only separated by the Ohio River from Indiana, Illinois, and Ohio, with a population of five millions. Through each State are numerous railroads, able to transport an army in a few days to our doors. What roads have we but those to Nashville and Lexington? And what can we do with them? In sixty days the North can pour an army of one hundred thousand men upon every part of us. What can we do? The State could raise perhaps sixty thousand men for her defense, but what can they do? Can they save your State and your city? From the heights beyond the river they can bombard your city and destroy it. They can cut off all communication with the South, and every foot of Kentucky soil eventually become desecrated by the invader.

Can the South help you? She has got more than enough to do to defend herself, for the North can with her fleet cut off all communication with the outside world, and by the Mississippi River with Western States, and actually starve the South into subjection. One hope for Kentucky remains—stand still with the border States and defy invasion from either side. My sympathies are wholly with the South, but I am not prepared to aid her in fighting against our government. If we remain in the Union we are safe; if we go out we will be invaded; if we hold as we are we are safe; if we go out we will be overpowered. There is but one position to assume for honor and safety, and that position taken we can save the country. Another point: If an army invades us can we save, can we protect, our homes and families? When, in our city, the sentinel struts the streets, and we are powerless before him, who is to protect our families? Those who have plenty of money can flee; but what is the poor man to do? He will have to fight. Think of it; who is to protect them from brutality and shame—our city from pillage and destruction? And it will surely befall us if we do not stand by our flag.

We do not mean to submit to Lincoln. He has commanded us to send troops. We sent word that Kentucky will not do it. Will he compel us? Let him not dare it! Let him not rouse the sleeping lions of the border States. She sleeps now, still and quiet, but it is not from lack of strength, courage, or power. She waits for the assault. Let it come, and roused, she will crush the power that assails, and drag Mr. Lincoln from his high place. Can he make Kentucky help him to kill? He has a right to demand troops, and he did. Glendower could, as he said, call spirits from the vasty deep, but would they come when they were called? Will the troops from Kentucky come at his call? No, they will never lend themselves to such a cause. But Kentucky will stand firm with her sister border States in the center of the republic, to calm the distracted sections. This is her true position, and in it she saves the Union and frowns down secession.

Let us wait for reason to resume her seat. Let us not fight the North or South, but, firm in our position, tell our sister border States that with them we will stand to maintain the Union, to preserve the peace, and uphold our honor and our flag, which they would trail in the dust. We will rear ourselves as a rock in the midst of the ocean, against which the waves, lashed by sectional strife, in fury breaking, shall recoil and overwhelm those who have raised them. If we give up the Union, all is lost. There will then be no breakwater, but instead Kentucky will be the battle-ground—the scene of a conflict between brethren—such a conflict as no country has yet witnessed. But if we take the true stand, the tide of war and desolation will be rolled back on both sides. If we must fight, let us fight Lincoln and not our government.

To go out of the Union is to raise a new issue with the North and turn the whole country against you. The ship of state is one in which we *all* sail, and when thus launched into the ocean, and about to founder because part of the crew rebel against the commander, it is the duty of all, unhesitatingly, to aid and save. Safety demands that we stand by the flag, by the government, by the Constitution! In the distance you hear the shouts of men and the roaring of cannon. The foemen are gathering for the dreadful conflict, and when you cut loose from the Union it is to take a part. But you are secure from both as long as you remain neutral. You are to determine now.



Examine all the points; look where you are going before you take the step that plunges you into ruin, and, calmly reasoning, free from excitement, determine to stand forever by the country, the Constitution, and the stars and stripes, and be still the mightiest nation the world ever saw.

Judge Nicholas made a beautiful, eloquent, and patriotic speech, which was greatly applauded, and closed by offering a series of resolutions, the last of which, as follows, was adopted, the balance being withdrawn:

*Resolved*, That we hail in Major Robert Anderson the gallant defender of Fort Sumter, against overwhelming odds, a worthy Kentuckian, the worthy son of a patriot sire, who has given so heroic an example of what ought always be the conduct of a patriot soldier in the presence of the armed assailants of his country's flag; that he, his officers, and men have well earned the admiration and gratitude of the nation.

Judge Bullock was generally called for, and responded in a clear, forcible, and logical speech, indorsing the spirit of the preamble and resolutions adopted, and urging Kentucky to pursue the course laid down in them as the safest, wisest, and most noble for the first born of the Union. His speech was characterized by that eloquence of diction so well known as an attribute of Judge Bullock's oratorical efforts. He was frequently interrupted in the course of his remarks by cheers and applause.

Hon. John Young Brown followed in a speech unsurpassed in power and brilliancy. The gifted young orator-rehearsed the history of the last Congress, the efforts for compromise, the surrender by the republicans of the fundamental idea of the Chicago platform, the positive non-extension of slavery in the formation of the new Territories.

He held his audience spell-bound, as it were, for more than an hour, as he poured out burning words of indignation upon those who have brought the country into its present unfortunate condition, or depicted the horrors of civil war. He earnestly urged the neutrality of Kentucky in the present crisis, as the best and most practicable position for Kentucky to maintain her integrity in the Union, and to mediate between the antagonistic sections.

The meeting, which was entirely orderly, adjourned after giving rounds of cheers for the Union and for the American flag.

The lateness of the hour prevents us from giving more than a report of two of the speeches.

---

[From the Louisville Democrat.]

We publish below the card of John Young Brown announcing himself as a candidate for re-election in the fifth congressional district of Kentucky. It affords us real pleasure to know that it is the general wish of the people of his district and of the State that he should make the canvass. One of the most able debaters in the State and of matchless eloquence, it is proper he should be the standard-bearer in this hour of peril. We all feel and know that in his hands the district's and the State's interest will be safely guarded. We suppose, from the universal sentiment in his favor, that he will be chosen by acclamation:

TO THE VOTERS OF THE FIFTH CONGRESSIONAL DISTRICT.

ELIZABETHTOWN, May 13, 1861.

FELLOW-CITIZENS: In compliance with the wishes of my friends throughout the fifth congressional district, I announce myself as a candidate for re-election to Congress. My opinions are the same as heretofore expressed in public speeches made in seven counties of the district. I have seen no reason to change them, and I have not changed them.

Kentucky's present position should be maintained. With coolness, and firmness, and courage, let her brave and patriotic sons struggle hopefully and unpausingly to preserve her present proper and commanding attitude. By her recent unparalleled vote, our State has sent up, from the depths of her great heart, a prayer for peace, and given a pledge of her noble conservatism. As she is free from the guilt of the unhappy troubles of the nation, let us shield her, if we can, from their harmful consequences.

At an early day I will make appointments, and canvass the district, so far as I am able.

Very respectfully, your obedient servant,

JOHN YOUNG BROWN.

---

[From the Louisville Journal.]

Hon. JOHN YOUNG BROWN.—We take great pleasure in publishing the address of the Hon. John Young Brown to the voters of the fifth congressional district. The address is brief, yet full, and to every patriot it must be satisfactory.



We know that Mr. Brown had no wish to be a candidate for re-election to Congress, and consented only after much earnest persuasion from the friends of the Union. He is emphatically a man for the times—brave, bold, eloquent, patriotic, firm, and incorruptible. Moreover, his intellectual ability is very extraordinary, and the extent of his political knowledge remarkable. Young as he is, he can grapple with the strongest men of the nation as their peer. If his life be spared, he will, no matter what political revolution may occur, be one of the master-spirits of our land, for such power as his must in any condition of things make itself felt.

There are other noble Union spirits in the fifth congressional district, but we have no doubt that our friends in that district will, by common consent, hail John Young Brown as their champion in the congressional canvass.

---

### GEO. D. BLAKEY vs. J. S. GOLLADAY.

A board of canvassers can only ascertain and declare the result of the poll.

A minority of voters cannot elect a representative.

The report was agreed to, *nem. con.*, December 5.

December 2, 1867.—Mr. Dawes, from the Committee of Elections, made the following report:

*The Committee of Elections, to whom were referred the memorial of George D. Blakey, claiming to have been duly elected on the 4th day of May last a representative from the third congressional district of Kentucky, and the credentials of J. S. Golladay, claiming to have been elected a representative from the same district on the 7th day of August last, submit the following report:*

The right of these two claimants to the same seat depends upon the validity of elections held at different times, and it therefore becomes necessary to determine in the first instance upon the legality of the election first held; for if the one which is first in point of time be valid, the other cannot be.

The claim of Mr. Blakey, that he was duly elected such representative, rests upon the following facts:

An election for representatives to the present Congress was ordered by the governor of Kentucky to be held on said 4th day of May last. The claimant, Mr. Blakey, and the Hon. Elijah Hise, were candidates for representatives in the third district, and were voted for at that election. On the 27th of the same month, the governor, attorney general, and State auditor, who constitute by law a board of canvassers for counting the votes, met in pursuance of law for that purpose and certified the result of the vote on the 4th to be, in this district: for Elijah Hise, 7,740; for G. D. Blakey, 1,201.

After the election and before this canvass, to wit, on the 8th day of said May, the said Elijah Hise died, and Mr. Blakey claimed before the board of canvassers, and renews his claim before the House, that he was entitled to the certificate of election and to retain the seat as such representative.

First, because at the time of said canvass, he, the said Blakey, was the only person then alive for whom votes had been cast for such representative. In this the claimant has, in the opinion of the committee, wholly mistaken the function of the board of canvassers. The sole duty of the board is to ascertain the result when the polls closed on the day of election. They can in no way or particular change or alter that result, but only ascertain and make it known. If the claimant had not, when the polls closed, a majority of the votes legally cast, nothing



transpiring subsequently could give him that majority. If Elijah Hise had that majority when the polls closed, that fact is unalterably fixed. It is sometimes quite difficult to ascertain who actually had such majority at the close of the polls; but the determining of that fact determines all else pertaining to the election. A vacancy occasioned by the death of one who has received a majority of the legal votes cannot depend upon whether he had or had not received a certificate of his election before his decease. The certificate is not his title to his seat, but simply one form of evidence thereof.

Second, he further claims the seat because, "by the laws of Kentucky governing elections, the judges and other officers of the county courts in said State, in the appointment of officers to hold and conduct elections in said State, are required to appoint officers representing the two political parties in the State, and that each political party should be represented in the officers of every election precinct." This provision of law, he claims, was almost totally disregarded in eleven out of the twelve counties composing this district, thereby rendering illegal the election in those counties, and that in the other county, where this provision was complied with, he received a majority of the votes cast.

The provisions of law governing elections in this particular are as follows:

[Page 432, vol. 1, Revised Statutes, Kentucky.]

SECTION 1. Each county court shall, in the month of June or July in every year, appoint two justices of the peace, if so many there be, or one justice and one other suitable person, as judges, and a clerk of the election, for each precinct in the county. It shall also, in the month of March or April every second year, appoint two suitable persons as judges, and a clerk of the election, for each district, for the election of justices of the peace and constables in the county. Such judges and clerks shall hold their offices till their successors are appointed and qualify.

SEC. 3. Should the court fail to appoint such judges or clerks, or either fail to attend for thirty minutes after the time for commencing the election, or refuse to act, the sheriff or his deputy shall appoint a suitable person or persons to act in his or their stead for that election.

[Myers's Supplement, p. 456.]

AN ACT to amend section 1, article 3, chapter 32, title "Elections," of the Revised Statutes.

*Be it enacted by the general assembly of the Commonwealth of Kentucky,* That hereafter, so long as there are two distinct political parties in this commonwealth, the sheriff, judges, and clerk of election, in all cases of elections by the people under the Constitution and laws of the United States, and under the constitution and laws of Kentucky, shall be so selected and appointed as that one of the judges at each place of voting shall be of one political party, and the other judge of the other or opposing political party; and that a like difference shall exist at each place of voting between the sheriff and clerk of elections; *Provided,* That there be a sufficient number of the members of each political party resident in the several precincts, as aforesaid, to fill said offices. And this requirement shall be observed by all officers of this commonwealth who have the power to appoint any of the aforesaid officers of election, under the penalty of a fine of one hundred dollars for each omission, to be recovered by presentment of the grand jury.

MARCH 15, 1862.

AN ACT to amend an act entitled "An act to amend section one, article three, chapter thirty-two, title 'Elections,' of the Revised Statutes," approved February 11, 1858.

SECTION 1. That in construing the act approved February 11, 1858, to which this is an amendment, those who have engaged in the rebellion for the overthrow of the government, or who have in any way aided, counseled, or advised the separation of Kentucky from the federal Union by force of arms, or adhered to those engaged in the effort to separate her from the federal Union by force of arms, shall not be deemed one of the political parties in this commonwealth within the provisions of the act to which this is an amendment.

SEC. 2. This act to take effect from and after its passage.



The claimant offered to prove that there existed at the time of the election a sufficient number of members of the political party to which he belonged in each of the precincts in the district to have enabled the county judges to have conformed to the foregoing provisions of law, had they been disposed, and the case was heard by the committee as if such proof had been filed. He then claimed that a comparison of the poll-books of the several precincts showed that at the election, which in the State of Kentucky is *viva voce*, but twenty-three of all the officers of election voted for him, while two hundred and ten voted for Mr. Hise and fifty-seven did not vote at all.

The attention of the committee has not been called to any provision in the statutes of Kentucky prescribing in what manner the several county courts are to define political parties and ascertain the exact political faith of each appointee, so as to enable them to comply with the provisions of these statutes. Obviously they cannot resort to the poll-book of the next election, the test to which the claimant has appealed to show that the statutes have been disregarded, for they are required to make the appointments long before these poll-books have any existence. No poll-book of an election to be held *after* the appointment is made can afford evidence to guide in making the appointment. If resort is to be had to the poll-book of the election next preceding the appointment to determine the political *status* of the several appointees, then, for aught that appears in this case, those poll-books would show that status to be what the law requires, for no evidence from these poll-books or elsewhere was offered to show how these several officers of election voted at the election next preceding their appointment. If personal knowledge of the political opinions of men on the part of the county judges, or general political reputation, are to be the guide in making the appointment of the officers of election, it is difficult to see in what manner this committee could determine that the statute had not been complied with in making the appointment. It is sufficient, however, to say that there was no offer of evidence that any such test was disregarded. But the conclusion to which the committee arrived has rendered unnecessary all speculation as to the true construction or mode of administering the law which it is claimed has been violated.

If all that the memorialist claims in this respect be admitted, viz, that in eleven out of the twelve counties composing the district this law had not been complied with, and that a non-compliance with it renders null and void the election in those counties, still it is the unanimous opinion of the committee that no such result as is claimed by the memorialist—namely, his own election—would follow. In the remaining county, where it is claimed the law was complied with, and the election therefore valid, there were cast only 737 out of 8,941 votes; and of these 737, Mr. Blakey received 378, to 359 for Mr. Hise, leaving only a majority in this county for Mr. Blakey of 19. Of the whole vote in the district, as has been already stated, he received only 1,201. If, therefore, the election was invalid in eleven out of the twelve counties, rendering it impossible to count but 737 votes out of 8,941, no other alternative would be left but to set aside altogether such an election, and remand the case back again to the people, that they might have an opportunity to give expression to their choice in conformity to law. There is no precedent for fixing upon the district representation determined by 378 votes out 8,941, and the committee see no reason for making one.

Third. The third ground upon which the memorialist claims the seat is as follows:

The said Elijah Hise, known to be disloyal during the late war, and since, was the



candidate of the rebels, was voted for by a large majority of returned rebel soldiers, rebel sympathizers, and avowed disunionists; and those voting for the said Elijah Hise did it in a capitious spirit of defiance and contempt of the laws of Congress. I [the said Blakey] stood for the same office, as the candidate of the republican party, the representative of the true loyal sentiment of that party in said district, and, as the record will show, received a majority of the loyal votes polled in said district at said election, held on said 4th day of May, 1867.

No evidence was offered by the memorialist in support of his third proposition, and no sufficient reason given why, if relied upon, it was left till this day unsupported by evidence. The committee are not called upon, in this case, to express an opinion upon the legal effect of the proposition, had it been supported by evidence.

The memorialist does not claim the seat upon any other grounds, and the committee are unanimously of the opinion that these do not entitle him to it.

The only objection to the administering the oath of office and admission to the seat of Mr. Golladay, known to the committee, being the claim of the memorialist to be entitled to the seat by virtue of a prior election, this disposition of that claim removes all obstacle, and, in the opinion of the committee, Mr. Golladay should be admitted to the oath of office and to the seat.

The committee recommend the adoption of the following resolutions:

*Resolved*, That George D. Blakey is not entitled to a seat in this House as a representative from the third congressional district in Kentucky.

*Resolved*, That the oath of office be now administered to J. L. Golladay, and that he be admitted to a seat in this House as a representative from the third congressional district in Kentucky.

*To the House of Representatives of the fortieth Congress of the United States:*

Your memorialist would respectfully state, that at an election held in Kentucky on the 4th day of May, 1867, for representative to the fortieth Congress, myself and one Elijah Hise, were candidates to represent the third congressional district of said State in said fortieth Congress, Hise, the candidate of the "rebel democratic" party, and your memorialist, the candidate of the Union or republican party.

I claim that I am the legal and rightful representative of the third congressional district for the following reasons:

First, by the laws of Kentucky it is made the duty of the county officers to make returns to the office of the secretary of state of the votes cast, and the governor, attorney general, and auditor are the constituted board of examiners to count and ascertain the number of votes cast, and to certify the election of the person receiving the highest number of votes, if in all things the laws of the United States and of the State have been honestly, fairly, and legally complied with. Subsequent to said 4th day of May, 1867, to wit, on the 8th day of May, 1867, four days after said election, and some twenty days before the forms of law had been complied with, or the result officially announced, the said Elijah Hise committed suicide; in consequence of which, at the time of the reception by the governor and examining board of the full returns of the votes cast at said election, on the 4th day of May, 1867, in said district, I was the only candidate before said board of examiners, and claim that the election certificate should have been given to me. At the time of the comparison by the governor and others constituting the board of the votes cast at said election on the said 4th day of May, 1867, for said Hise and myself, it was known to them that the said Hise had committed suicide, and that the only candidate for said office was your memorialist. But the said governor, attorney general, and auditor treat the polling and voting done and had on said 4th day of May, 1867, in said third congressional district, as a nullity, and particularly the said governor, who by his published proclamation orders a new election to be held on the first Monday in August, 1867, for the election of a representative from said district. I have taken the necessary steps to advise said governor, attorney general, and auditor, and others, of my intention and determination to submit the question of my election to the fortieth Congress, in consequence of which no other election can be held in said district for the same office.

Second, by the laws of Kentucky governing elections, the judges and other officers



of the county courts in said State, in the appointment of officers to hold and conduct elections in said State, are required to appoint officers representing the two political parties in the State, and that each political party should be represented in the officers of every election precinct; and by the act of March 15, 1862, "it is further enacted that those who had engaged in rebellion for the overthrow of the government, or who had in any way counseled or advised the separation of Kentucky from the federal Union by force of arms, or adhered to those engaged in the effort to separate her from the federal Union by force of arms, should not be deemed one of the political parties of the State," (and they cannot be officers at any election.) Those provisions of the statute were wholly disregarded by eleven of the twelve counties composing said district, to wit, Allen, Warren, Logan, Todd, Simpson, Barren, Cumberland, Metcalf, Hart, Russell, and Clinton. Certificates of the clerks of the counties above mentioned are submitted, numbered from one to eleven inclusive. It is proper to state that the provisions of the statutes above cited were faithfully observed by the twelfth county of the said third congressional district, the county of Monroe, in which I obtained the highest number of votes cast at said election for representative in Congress, on the 4th day of May, 1867.

Third, the said Elijah Hise was known to be disloyal during the late war and since, was the candidate of the rebels, was voted for by a large majority of returned rebel soldiers, rebel sympathizers, and avowed disunionists: that those voting for the said Elijah Hise did it in a captious spirit of defiance and contempt of the laws of Congress. I stood for the same office, as the candidate of the republican party, the representative of the true loyal sentiment of that party in said district, and, as the record will show, received a majority of the loyal votes polled in said district at said election held on the 4th day of May, 1867.

For these reasons, which are respectfully submitted to your honorable body, I claim that I am the legal and rightful representative of the third congressional district of Kentucky in the fortieth Congress of the United States.

I deem it scarcely necessary for me to speak of the firm and decided stand I took in behalf of the government, and for its maintenance and preservation, at all hazards, at the beginning of the late war for its destruction by rebels and traitors. I have ever been true and loyal to the government of my fathers, and claim that I represent the *loyal* portion the third congressional district of Kentucky.

He states further that the said Elijah Hise, at the time of the election on the 4th day of May last, was by law disqualified from holding the office of representative in the Congress of the United States by reason of disloyalty; that this disqualification existed at the time was publicly charged and known by those who voted for said Hise, and that those who voted for said Hise cast their votes in a captious spirit, and for the purpose of defying the laws of the United States.

He further alleges the majority of votes cast for said Hise, over and above those cast for your memorialist, are the votes of unpardoned rebels, who have been and are deemed "amnesties;" that they also occupy the position of prisoners of war, and that the votes of all such are illegal and void, and that of the votes cast which were and are legal; and which were cast at said election on the 4th day of May, 1867, in conformity to law, your memorialist has a majority, as he will be able to show, and believes he can present such a case as will entitle him to a seat in your honorable body for the said third district of Kentucky as member of the fortieth Congress. All of which is respectfully submitted.

GEO. D. BLAKEY.

---

STATE OF KENTUCKY, OFFICE OF THE SECRETARY OF STATE,  
*Frankfort, August 26, 1867.*

The undersigned, a board for examining the returns of the election held the 5th day of August, 1867, hereby certify that J. S. Golladay received a majority of the votes given in the third congressional district of the State of Kentucky, for the office of representative in the fortieth Congress of the United States, and is therefore duly elected to that office for the term prescribed by the Constitution, which election was held in accordance with the Constitution and laws of the United States and of the State of Kentucky.

THOS. E. BRAMLETTE, *Governor.*  
JOHN M. HARLAN, *Attorney General.*  
J. O. SAMUELS, *Auditor Public Accounts.*



## [FIRST REPORT.]

## SAMUEL MCKEE vs. JOHN D. YOUNG.

Disloyalty disqualifies from holding a seat in the House.

Soldiers of the rebel army, surrendered or on parole, could not legally vote for a member of Congress.

Persons incompetent to vote under Kentucky statute could not act as officers of election, and elections held under such circumstances were void.

First report of the committee, so far as it affected Mr. Young, the sitting member, was agreed to; that relating to Mr. McKee, the contestant, was recommitted.

The final report, admitting McKee to the seat, was agreed to, (June 22,) yeas, 62; nays, 43.

March 23, 1868.—Mr. McClurg, from the Committee of Elections, made the following report:

*The Committee of Elections, to whom were referred the credentials of John D. Young, claiming to have been elected a representative from the ninth congressional district of Kentucky, and the memorial and papers in the case of Samuel McKee, contesting the right of said John D. Young to his seat, and claiming that he is entitled to the same, submit the following report:*

By a resolution of this house, adopted on the 8th day of July, 1867, your committee were instructed, among other things, to inquire and report whether the said John D. Young is "disqualified from sitting as a member of this house, on account of his having been guilty of acts of disloyalty to the government of the United States, or having given aid and comfort to its enemies."

In pursuance of said resolution testimony was taken in this case, as well as in other cases mentioned therein, and was reported to this house in Mis. Doc. No. 47, fortieth Congress, first session.

Samuel McKee contests the right of said Young to his seat, and claims to have been elected thereto as the representative from said district, and assigns a number of reasons why it should not be given to Young, and why it should be given to him, (McKee,) all of which are set forth in his notice of contest, found on pages 1 and following of House Mis. Doc. No. 13, second session, fortieth Congress.

Among other allegations in said notice, said McKee alleges that said Young "voluntarily gave aid, countenance, counsel, and encouragement to persons engaged in armed hostility to the government of the United States."

As the testimony taken by the committee under the first resolution, and much of that taken under the notice of contest, relate to the charges of disloyalty, the committee have thought it best to consider all the testimony taken under the resolution and under notice of contest, and make known their conclusions in one report, both as to the alleged disloyalty of said Young and the merits of the claims of said McKee to the said seat.

The charges, therefore, against Young are first to be inquired into.

The testimony touching these charges of disloyalty is to be found in House Mis. Doc. No. 47, above mentioned, and in House Mis. Doc. No. 13, second session fortieth Congress, pages 10, 11, 12, 13, 16, 17, 31, 32, 39, 42, 45, 64, 102.

The committee find the allegations of the contestant so sustained by the proof that it is unnecessary to contend that a rule too liberal in favor



of those who sympathized with the late avowed enemies of the government was adopted when report No. 2 of this session was approved by this house in the cases from Kentucky of Beck, Jones, Grover, and Knott. This case is brought within the rule then laid down, as it is proven, by clear and satisfactory testimony," that the said John D. Young "has been guilty of such acts of disloyalty that he cannot honestly and truly take the oath prescribed by the act of July 2, 1862."

The testimony of witnesses both for and against Mr. Young shows that he was not regarded by any as a Union man, and that he was not merely in passive sympathy with those engaged in the rebellion, but desired its success, and so expressed himself.

Before quoting testimony on this point the committee would express the opinion that "aid and comfort" may be given to an enemy by words of encouragement, or the expression of an opinion, from one occupying an influential position. The said John D. Young occupied the official position of county judge, as shown in the testimony.

On page 62 of Mis. Doc. 47, as above, William S. Sharp testifies :

In an interview with him (Young) he took the ground that the war was not a rebellion, but a *revolution*. I recollect distinctly asking him if he thought the South had just cause for the *revolution*. He said he thought *it had*. I laid his case before General Boyle, and was ordered by him to send Mr. Young to Camp Chase.

On page 59, Mis. Doc. 47, G. W. Parsons testifies :

In the year 1861, one day Mr. Young staid for dinner, &c. I was there. After dinner Mr. Gill, Mr. Young, and myself got into conversation on the subject of the war. It was after Mr. Lincoln had called for seventy-five thousand men, and that was the subject of the discussion. Mr. Young took position against the action of the President, and remarked, among other things, that Mr. Lincoln ought to be impeached and hung as high as Haman. I asked him what ought to be done with Jefferson Davis, and he said "nothing; that Mr. Davis had violated no constitutional obligation."

On page 58, Mis. Doc. 47, Spotswood Dedman (colored) testifies :

*He (Young) always talked in favor of the rebellion.*

On page 57, same book of testimony, John Miller testifies :

All took him to be a rebel. He was a rebel. I heard Josh Ewing talking to him one day, and saying that he could take his (Ewing's) sons into the rebel army, but could not go himself. That was on the street in Owingsville.

And this is confirmed, on page 65, same book, by W. H. T. Moss, who testifies :

Mr. Joshua Ewing, and Mr. Young, and a crowd were chatting in the street one morning, and I heard Mr. Young remark to Mr. Ewing, "I expect to have a company in South Carolina to fight the Yankees, and I expect to take your boys with me." Ewing replied, "Perhaps you will. If you do not like this country you had better leave."

On page 72, same book, James Hall testifies :

He (Young) was in favor of the South gaining its independence. I heard him speak of it frequently on the street in Owingsville.

#### FEEDING REBELS.

But the "aid and comfort" extended are not confined to mere expressions and words of encouragement, but said Young seems to have been "active in feeding rebels." On page 58, said Mis. Doc. 47, Spotswood Dedman (colored) testifies :

When the rebels were passing through Owingsville, where I was then living, and where Mr. Young lived, he took a very active part in feeding them and conveying provisions to them. When rebels were passing through he would take them to his house and feed them. At this time nobody was forced to feed them unless he chose. It was voluntary. Sometimes he would go out and meet them, and he would welcome them to town.



## POINTS OUT A UNION SOLDIER.

But Union soldiers were not favorites with those who were in favor of "the South gaining its independence."

Greenup Nickell, on pages 16 and 17 of Mis. Doc. No. 13, above named, testifies as follows:

By SAMUEL MCKEE:

Question. State where you reside, your age, and what position you occupied during, in 1864, the late rebellion.—Answer. I reside in Centre County: I am forty years old; I was a captain, Company A, 54th Kentucky mounted infantry, federal army; went into the army in 1864, in the fall season.

Q. Please state if you have any knowledge of any disloyal act or acts committed during the rebellion by Judge John D. Young, now claiming a seat in the fortieth Congress from the ninth Kentucky district—anything in aid or encouragement of the rebellion, or those who were in arms against the government of the United States.—A. In the spring of 1863, I was on my way from Mount Sterling, Kentucky, home. After passing Owingsville, between Owingsville and State Bridge, I was met by a squad of confederate soldiers, as they called themselves, in number from fifteen to twenty, as near as I remember; they told me they were going into Owingsville and did not allow anybody to go out until they got ready, and that I must go back with them, which I did. After they rode into the town there was a pretty general rushing of the town people, who came up or out to see them. Among others who came, there was a certain gentleman who came down toward where I was, and up to the men who had me in charge, and close by where I was standing; he was pointing his finger in the direction of a certain house, and named the house, but I don't now remember the name of said house, and told the men that in that house there was a "Yankee soldier," and to go for him, which the rebel soldiers did. A part of the lot went to the house, and some who remained near me turned toward the gentleman, whom I did not know, and spoke to him and said "How are you, Judge Young?" This same man whom they called Judge Young, and a part of the rebel soldiers, turned away from me and engaged in conversation, in rather a lower tone of voice than at first; I did not hear what was then said, but in a very short time a part of the same men went off and in a few minutes returned with some horses, upon one of which they mounted the prisoner they had taken, and soon after moved off. Before they returned with the horses, the man whom they called Judge Young went off, and I did not then again see him any more.

Q. Have you seen him since? And if so, state the circumstances.—A. I don't know whether I have ever seen him since or not, but at February court, just previous to the May election last, I was in court, in the court-house at Moorehead, and while the court was going on I heard some one speak out, "How are you, Judge Young?" I was at once reminded of the same expression I had heard at Owingsville, and turned to see who it was. Tom Hayes, who had been a captain in the rebel army, was standing near, and I took him to be the man, from the voice, who then addressed the man he called Judge Young. I was not acquainted myself with Judge Young, but when I saw him there in the court-house at Moorehead, I took him to be the same I had seen at Owingsville, and believe that he was the same man. These are the only two times I have seen Judge Young, if this was him.

Q. Please describe the man whom you saw, and whom they called Judge Young.—A. As near as I recollect, he seemed to be about a common man in height and size. He was a good-looking man, as I thought; had very dark hair, dark whiskers, and a very keen black eye; thought about as keen an eye as I had ever seen.

Q. Were you a soldier or citizen when captured near Owingsville in 1863?—A. I was a citizen, dressed in citizen's clothes, and had nothing to do with the army at that time.

Q. Did the rebel soldiers capture the Yankee soldier from the house to which Young pointed?—A. They captured the soldier, brought him out, and took him off with them; released me, and told me I could go where I pleased.

Cross-examined:

Q. Please state who was in command of the rebel squad that captured you near Owingsville, Kentucky, in the spring of 1863; and state what time of year it was.—A. I did not know any of the squad of rebels that captured me in 1863. I was captured in the spring, I think the last of February, or the first of March.

Q. Please state whether you were acquainted with any of the citizens of Owingsville when you were taken there; and if so, who were they?—A. When I was taken back to Owingsville, I did not recognize anybody that I knew that lived there. I recognized Jo. Wells, who resided in the neighborhood; he was with me when I was arrested, and went with me to Owingsville.

Q. Did you hear J. D. Young use any disloyal language; and if so, what was it?—A.



A man whom the soldiers called Judge Young came to them and pointed to a house, and told said soldiers that there was a federal soldier there, and to go for him, which they did; this is all the language I heard the man called Judge Young use. The soldiers that arrested me professed to belong to Colonel Clarke's command.

Q. State the height, age, weight, &c., of the man that was called Judge Young by said squad of soldiers.—A. I thought him to be about a middle-aged man, and of medium size and height, &c.

Q. Was his face shaven or not, and was his hair gray or not?—A. His face was unshaven, and his beard tolerably long, and his beard and hair were not mingled with gray, that I saw or noticed; I did not notice his hair and beard closely.

This witness brings to light a positive act of disloyalty, of "aid and comfort" to the enemies of the government, which clearly brings the case within the rule laid down by the committee in report No. 2, above mentioned.

The testimony is positive, distinct. Judge Young, pointing his finger, named a certain house, and said to "a squad of confederate soldiers": "In that house there is a *Yankee soldier*; go for him;" "which the rebel soldiers did." "This same Judge Young talked in rather a lower tone of voice; a part of the same men went off, and in a few minutes returned with some horses, upon one of which they mounted the prisoner they had taken, and soon after moved off."

There appear in Mis. Doc. No. 13, on pages 115 and 116, the affidavits of eleven persons, citizens of Owingsville, intended to explain away or invalidate the testimony of Greenup Nickell. But these affidavits are wholly *ex parte*, and taken without notice to contestant.

Their use was objected to by contestant, and they were not received in evidence by the committee, and well-established rules in such cases will exclude them from consideration. But if permitted to be used they would be worthless as detailing *mere opinions*. One statement is, that *during a certain raid* "there was but one man captured, as we now remember." "We do not believe Judge J. D. Young had anything to do with it, nor was he present or near where the arrest was made." There is no testimony to prove that there were not two arrests of Union soldiers that spring of 1863 at Owingsville.

Another statement, in these *ex parte* affidavits, is that said Nickell was notorious, committing outrages, plundering, &c., and that one Trumbo was captured, and affiant "*don't believe* said Nickell was in town at the time of said capture."

Captain Greenup Nickell swears positively, and there is no testimony to contradict him, and, in the printed testimony or *ex parte* affidavits, no attempt made to invalidate his testimony, notwithstanding he was forty years of age, *notorious*, and a captain in the federal army.

One witness, J. W. Moore, an ex-member of the *rebel congress*, was introduced by Mr. Young, and testified before the committee, and the attempt was made to prove by him that Captain Greenup Nickell was not entitled to belief on oath.

This *ex-rebel congressman* testifies that he had been in Kentucky but one day since, in 1861; that he knew two men by the name of Greenup Nickell, of Morgan County, one *sixty*, and the other "perhaps *thirty* years of age," and that "the younger was of a bad character."

The testimony shows the witness, Captain Nickell, to be Greenup Nickell, of Carter County, and *forty* years of age; so that there is nothing conflicting in the testimony of this ex-rebel congressman and this federal captain.

The contestee, Mr. Young, is fully identified in the testimony as the same person alluded to by the witness Greenup Nickell. That witness, on page 17, Mis. Doc. No. 13 testifies:

Question. Have you seen him since? and if so, state the circumstances.—Answer. I



don't know whether I have ever seen him since or not; but at February court, just previous to the May election last, I was in court at the court-house at Moorehead, and while the court was going on I heard some one speak out, "How are you, Judge Young?" I was at once reminded of the same expression I had heard at Owingsville, and turned to see who it was. Tom Hayes, who had been a captain in the rebel army, was standing near, and I took him to be the man, from the voice, who then addressed the man he called Judge Young. I was not acquainted, myself, with Judge Young, but when I saw him there in the court-house at Moorehead, I took him to be the same I had seen at Owingsville, and believe that he was the same man. These are the only two times I have seen Judge Young, if this was him.

On page 40, same book of testimony, another witness testifies:

There has not lived any other man called Judge Young in this county, except John D. Young, the party to this contest, &c.

On page 45, same book, another witness testifies:

John D. Young is the only man by the name of Young in this county who *has been* a judge. He was judge of the Bath County court.

The testimony of Dr. John H. Williams, on page 31, Mis. Doc. No. 13, proves that Mr. Young gave "aid and comfort" to the enemies of the government, by associating with rebel soldiers. He testifies:

I have been acquainted with John D. Young some ten or fifteen years, and do state that during the rebellion I saw J. D. Young on Beaver Creek, and at Thomas Greenwaid's, who confessed to be a captain in the rebel army, and I saw Mr. Young pass in toward Blackwater, where I was informed that there was a rebel camp on Blackwater; and I was told by the rebel soldiers that J. D. Young was engaged in recruiting soldiers for the rebel army; and I never heard any person dispute his being a sympathizer with the rebels until he became a candidate for Congress. And I further state that I saw him in company with rebel soldiers who claimed to belong to Peter Everett, and were with him in his last raid in Kentucky, and so far as I could judge, J. D. Young seemed to be agreeably situated when with those soldiers; and I was informed by the rebel soldiers that J. D. Young was an officer in their army; this I was told by Jacob Edwards and two of the Sexton boys, who were in the rebel army; and I saw Mr. Young passing some two or three times, and I think oftener.

#### "A GOOD GUN."

But one "generally regarded as a rebel," who made himself "agreeable when with rebel soldiers," who was "active in feeding them," who "always talked in favor of the rebellion," who "favored the independence of the South," who could direct rebels to "*go for a Yankee soldier*," would find it very difficult to conceal all his tracks.

The testimony of Henry H. Ewing, page 60, Mis. Doc. No. 47, gives evidence of other material "aid and comfort" rendered the enemies of the United States government. He testifies: Young "was at Prestonsburg when there were a parcel of men there collected to be organized into the confederate service." "I do not know that he had a gun there. He showed me a gun standing in the porch of the house where he was staying, and asked me to take care of it. He said, 'There is a *good gun*; take care of it.' "The gun was a Minie rifle." "I do not know why Mr. Young brought it there. He never inquired of me what became of it." "Guns were scarce there at that time." "I took care of the gun for three or four weeks, and then, when I was coming home, I gave it to a cousin of mine in the army." "I afterward went back to the army," and staid till the surrender. "I and my two brothers were in the confederate army." "I am a son of Mr. Joshua Ewing."

Comment upon this testimony is unnecessary. It should be borne in mind that this witness testifies he is the son of Joshua Ewing, with whom, as in the testimony hereinbefore quoted, Mr. Young talked, in a crowd in Owingsville, and said, "I expect to have a company in South Carolina to fight the Yankees, and I expect to take your boys with me."

This witness does not know "why Mr. Young brought the gun there,"



but he swears "a parcel of men were there collected to be organized into the confederate service;" "guns were scarce." Mr. Young said, "There is a good gun; take care of it." He (witness) "took care of it three or four weeks, and gave it to a cousin in the army."

#### NO CLAIM TO UNIONISM.

It is worthy of remark that no testimony has been introduced by Mr. Young to show or indicate that he ever was or ever claimed to be a Union man during the whole struggle for the life of the nation. There is no claim for him in the testimony that he was even so lukewarm in his devotion to the government as to have been neutral and indifferent as to the result of the late struggle.

The very reverse of lukewarmness is shown in the testimony. On page 55, Mis. Doc. No. 47, T. B. Oldham testifies:

I was at Stanton on the 1st of April, (1867,) during the canvass between Mr. McKee and Mr. Young. When I went in Mr. Young was speaking. I put some questions to him. I asked him on which side his sympathies were during the war—with the army commanded by Grant or that commanded by Lee. *His reply was that they were with the rebellious party.*

This testimony is confirmed by another witness, Zera Welch, on page 11, Mis. Doc. No. 13, in positive language.

On page 42, Mis. Doc. No. 13, John E. Reis testifies:

I was in the storehouse of Wills & Conner, and heard some man say that he would vote for no man who had worn *the blue clothes*; and Judge Young, who was sitting by reading a paper, nodded his head and *said that was right.*

Such expressions and admissions, as late as in 1867, of sympathy having been, during the war, with the rebellious party, taken in connection with the open acts of "aid and comfort to the enemies of the government of the United States," "proven by clear and satisfactory testimony," as above set forth, bring the committee to the conclusion that the said John D. Young "cannot honestly and truly take the oath prescribed by the act of July 2, 1862."

---

#### McKEE CONTESTS.

*Samuel McKee contests Mr. Young's right to the seat and claims it for himself.*

Before proceeding to state the grounds on which Mr. McKee bases his claim, the committee remark that the notice of contest is objected to by Mr. Young for the reason that the contestant does not "specify particularly the grounds upon which he relies in the contest." It is unnecessary to say whether or no this objection would have been sustained if made in time; for no objection appears in the answer of Mr. Young to the sufficiency of the notice. None appears to have been made during the time of taking testimony, and none in the progress of the argument before the committee by Mr. Young or his counsel. The objection first appears in Mr. Young's printed brief, after both parties had been fully heard in the whole case. In the opinion of the committee the objection as to particularity of specifications comes too late to require further attention.

The first point relied upon by the contestant (Mr. McKee) in his notice is that Mr. Young was disqualified and ineligible to the position of representative in Congress by reason of disloyalty, and that as such disqualification existed at the time Young was voted for, all votes cast



for him were illegal and void and not to be counted, and, as a necessary consequence, that the contestant having received the highest number of legal votes, is duly elected and entitled to the seat. This point has been ably and elaborately argued and decided by this committee and by the House, in the late case of *Smith vs. Brown*, of Kentucky, and the committee deem it necessary to say no more than that they decline to favor giving the seat to contestant on this ground.

The second point relied upon by contestant, in his notice, is that the vote of rebel soldiers, who were paroled prisoners of war and who voted for Mr. Young, should be rejected.

While the testimony may tend to show that even more than two thousand paroled rebel soldiers who at the date of the election, 4th May, 1867, were without pardon and amnesty, voted for Mr. Young, as the contestant contends, it is admitted by the contestant in his brief that the proof is not complete and satisfactory as to more than seven hundred and sixty-seven.

After an examination of the testimony the committee are not willing to say that more than seven hundred and fifty-two ex-rebel soldiers voted for Mr. Young. Of those eighty-six are hereafter rejected in the entire vote of various precincts for other causes, which would reduce the vote of the rebel soldiers to six hundred and sixty-six. But the committee, finding that there is no law of Kentucky disfranchising rebel soldiers, have not been able to see how those votes can be rejected.

The third point in contestant's notice is substantially the same as the second. The fourth is, that in a number of counties and precincts the freedom of the election was violated, and Union men prevented, by reason of threats, intimidation, and force, from casting their votes for him, (McKee.)

The committee fails to find this allegation sustained by the testimony.

The ninth relates to the freedom of the canvass; and the committee is unable to find testimony to sustain this allegation to such a degree as to justify the rejection of votes.

The fifth and tenth are very general, and require no comment.

#### SIXTH, SEVENTH, AND EIGHTH SPECIFICATIONS.

The principal ground upon which the contestant relied in his argument, and, as appears from his brief, rests his claim to the seat, is fully set forth in specifications 6, 7, and 8, on page 3, H. Mis. Doc. 13. This ground may properly be called the illegality of the election and election returns in certain counties and precincts.

Contestant claims and charges that persons who, by the express laws of the State, were disqualified from acting as election officers at any election in that Commonwealth did act as officers of the election which resulted in this contest, at each and every precinct in the counties of Floyd, Bath, and Montgomery; at the precincts of Elizaville, Centreville, and Tilton, in the county of Fleming; at the precincts of Maysville Nos. 1 and 2, Washington, Mayslick, Lewisburg, Orangeburg, Germantown, and Minerva, in the county of Mason; and at the Louisa precinct, in the county of Lawrence.

Contestant also charges that in the counties of Morgan, Bath, Floyd, and Montgomery, the sheriffs of the election were likewise disqualified, and that in various other precincts (mentioned on 3d page of H. Mis. Doc. 13) the laws of the State were violated in the manner of holding elections and in making returns, the particulars of which appear on the same page.



The laws of the State regulating elections, so far as claimed to apply to this case, are as follows :

[Chapter 32, Election laws, Statutes of Kentucky.]

ARTICLE 1. Section 2. Whenever a duty is imposed upon or power confided to a sheriff in reference to an election, the same shall apply to any officer or person acting for him at an election, and to the deputies of the sheriff, and such other officer or person, in the same manner as if the duty were imposed upon, or the power confided expressly to, such other officer, person, or deputies. \* \* \*

SEC. 3. Officer of an election, as used in this chapter, means a judge, clerk, or sheriff, or person acting for a sheriff, at an election; also a member of the board for examining poll-books or returns, or making returns. (Revised Statutes of Kentucky, Stanton, vol. 1, pp. 430, 431.)

Article 3, same chapter, pages 432 and 433, makes the sheriff an officer of the election, and prescribes his duties.

Section 6, of article 3, provides "that when the office of sheriff is vacant, or he is himself a candidate at any election, all his duties pertaining to that election shall be performed by the coroner, and such deputies as he may appoint for that purpose." (Stanton's Statutes of Kentucky, vol. 1, p. 433.)

[Page 432, vol 1, Revised Statutes of Kentucky.]

SECTION 1. Each county court shall, in the month of June or July in every year, appoint two justices of the peace, if so many there be, or one justice and one other suitable person, as judges, and a clerk of the election, for each precinct in the county. It shall also, in the month of March or April every second year, appoint two suitable persons as judges, and a clerk of the election, from each district, for the election of justices of the peace and constables in the county. Such judges and clerks shall hold their offices till their successors are appointed and qualify. \* \* \*

SEC. 3. Should the court fail to appoint such judges or clerk, or either fail to attend for thirty minutes after the time for commencing the election, or refuse to act, the sheriff or his deputy shall appoint a suitable person or persons to act in his or their stead for that election.

[Myers's Supplement, p. 456.]

AN ACT to amend section 1, article 3, chapter 32, title "Elections," of the Revised Statutes.

*Be it enacted by the general assembly of the Commonwealth of Kentucky,* That hereafter, so long as there are two distinct political parties in this Commonwealth, the sheriff, judges, and clerk of election, in all cases of elections by the people under the Constitution and laws of the United States, and under the constitution and laws of Kentucky, shall be so selected and appointed as that one of the judges at each place of voting shall be of one political party, and the other judge of the other or opposing political party; and that a like difference shall exist at each place of voting between the sheriff and clerk of elections: *Provided,* That there be a sufficient number of members of each political party resident in the several precincts, as aforesaid, to fill said offices. And this requirement shall be observed by all officers of this Commonwealth who have the power to appoint any of the aforesaid officers of election, under the penalty of a fine of one hundred dollars for each omission, to be recovered by presentment of the grand jury.

MARCH 15, 1862.

AN ACT to amend an act entitled "An act to amend section 1, article 3, chapter 32, title 'Elections,' of the Revised Statutes," approved February 11, 1858.

SECTION 1. That in construing the act approved February 11, 1858, to which this is an amendment, those who have engaged in the rebellion for the overthrow of the government, or who have in any way aided, counselled, or advised the separation of Kentucky from the federal Union by force of arms, or adhered to those engaged in the effort to separate her from the federal Union by force of arms, shall not be deemed one of the political parties in this Commonwealth within the provisions of the act to which this is an amendment.

SEC. 2. This act to take effect from and after its passage.



Such judges shall superintend the election, determine upon the legality of all votes offered, see that they are properly recorded with the voters' names in the poll-book kept for that purpose, attend to the proper summing up of the votes, certify the poll-book over their own signature, and deliver the same, inclosed in a sealed envelope, sealed by them before they separate, to the sheriff. \* \* \* When the judges disagree the sheriff shall act as umpire. Each clerk, in the presence of the judges, shall sign his name at the foot of every page of the poll-book as the election progresses, so that the same may be thereby identified. (Stanton's Revised Statutes, vol. 1, pp. 432, 433.)

AN ACT to change the mode of setting down votes in poll-books.

SECTION 1. That the mode of setting down the votes in the poll-books shall be so changed that the clerks of all elections hereafter held in this Commonwealth be required to keep the votes in numerals, commencing at the head of each column with the figure 1, and so continuing the count in numerals, down to the foot of the page.

SEC. 2. That this act shall take effect from its passage.

Approved February 6, 1866. (Stanton's Statutes, vol. 2, p. 753.)

Such are the laws of Kentucky governing elections, so far as they apply to the positions assumed in the notice of contestant.

The contestant contends, in substance, that an interpretation of these laws, acts of 11th February, 1858, and the 15th March, 1862, statutes of Kentucky, according to their true and natural meaning, brings the committee to a decision manifestly just and in his favor; that validity is given to elections alone by and through laws; and if they be disregarded in their positive requirements, there is no validity, and the acts are void.

By the words of the act of 11th February, 1858, "the sheriff, judges, and clerk of elections, in all cases of elections by the people, &c., under the constitution and laws of Kentucky, shall be so selected and appointed as that one of the judges at each place of voting shall be of one political party, and the other judge of the other or opposing political party; and that a like difference shall exist at each place of voting between the sheriff and clerk of elections."

The contestant claims that the requirements are distinct, explicit, positive; that they are not to be departed from, except only as provided in the law; that the only provision for departure is where there may not be a "sufficient number of the members of each political party resident in the several precincts to fill said offices;" that in the proviso itself it is repeated, "this requirement shall be observed," &c., with a penalty named to secure its observance by those having the power to appoint.

Contestant contends that no one will say in candor that a penalty attached to a law, to secure its enforcement by those who should execute it, heals over the violations of that law; that a judge or an executive officer may be impeached or suffer any other legal penalty for not enforcing a law, but the law is not thereby set aside, and the guilty criminal who has violated the law suffered to escape; that a penalty for not enforcing a law is one thing; that the effect of a law disregarded and set aside is another. He contends that the question, therefore, now to be decided is, has there been a gross violation or disregard of the law of February 11, 1858, in the present case?

He thus brings the committee to the investigation of the facts, as disclosed by the testimony, which he contends should cause a rejection of the vote of certain precincts, under this law requiring "that one judge at each place of voting shall be of one political party and the other judge



of the other or opposing political party, and that a like difference shall exist between the sheriff and clerk."

The committee find the following facts:

IN MASON COUNTY.

At Mayslick precinct a certified copy of poll-book shows that the clerk and sheriff voted the same ticket, and that Mr. Young's majority was .....	172
At Maysville, No. 1, poll-book shows that both judges voted the same ticket, and that Mr. Young's majority was .....	131
At Germantown, poll-book shows the sheriff and clerk to have voted the same ticket, and Mr. Young's majority to be .....	86
At Maysville, No. 2, poll-book shows that all the election officers voted the same ticket, and that Mr. Young's majority was .....	112
At Lewisburg, poll-book shows one judge, the sheriff, and clerk to have voted the same ticket, and Mr. Young's majority to be .....	148
At Washington, the poll-book shows the sheriff and clerk to have voted the same ticket, and Mr. Young's majority to be .....	69

IN MORGAN COUNTY.

At Ruin, poll-book shows all the election officers to have voted the same ticket, and Mr. Young's majority to be .....	73
At Caney, poll-book shows that three election officers voted the same ticket, and that Mr. Young's majority was .....	58

IN FLEMING COUNTY.

At Elizaville, a certified copy of "votes cast," "as appears on poll-book," shows that Mr. Young received a majority of .....	80
And on page 100, Mis. Doc. No. 13, present session, a witness testifies that one judge, the sheriff, and clerk, are democrats, and voted the same ticket.	

---

Making Young's majority where officers voted same ticket..	929
--	-----

---

A sufficient number of votes are shown by the poll-books to have been given for Mr. McKee to prove that election officers could have been selected from his friends.

LAW OF MARCH 15, 1862.

This brings the committee to a statement of the position assumed by contestant under the law of Kentucky of March 15, 1862, to wit: "Those who have engaged in the rebellion for the overthrow of the government, or who have in any way aided, counseled, or advised the separation of Kentucky from the federal Union by force of arms, or adhered to those engaged in the effort to separate her from the federal Union by force of arms, shall not be deemed one of the political parties in this Commonwealth within the provisions of the act" of February, 1858.

The contestant contends that, by the express language of this law, those who have in any way aided or adhered to those engaged in arms, &c., shall not be deemed one of the parties within its provisions; in other words, that those who have even so much as adhered, &c., shall not be deemed one of the parties out of which election officers can be selected; in other words, that those who have adhered to those engaged in the



effort to separate Kentucky from the federal Union by force of arms shall not be judges, clerk, or sheriff at any place of voting.

He contends that it cannot be seriously insisted upon that those only come within the provisions of the act of March, 1862, as adherents, who, as "adhering, giving aid and comfort" to an enemy, could be convicted of treason; that the law was evidently intended to embrace others not so violent in feeling against the government; that those who had been in arms are named, then those giving aid and comfort, and then those adhering; that such adherence may be manifested by sentiments expressed, one active, influential citizen remaining in the walks of civil life doing infinitely more harm to the government and giving more aid and comfort to an enemy than many could with swords by their sides in military organizations; that the intention of the law evidently was to keep the ballot-box pure—unpolluted by rebel hands; that the law was enacted 15th March, 1862; that four days prior thereto, 11th same month, a law was enacted declaring citizens expatriated for continuing in arms, giving aid and comfort, &c.; that they ceased to be voters; that the one law was to deprive of power a former voter who had become disloyal; that the other law was to deprive of power a disloyal party by refusing to them the control of the ballot-box; that the day after that act of 15th March, 1862, became a law, an adherent to those in arms could not legally perform the duties of an election officer; that it was thereafter as binding, until repealed, as it was the first day after its enactment; that the law has not been repealed, and is now operative; that the law of 11th March, 1862, was repealed 19th December, 1865, which restored citizenship to those who had been in armed rebellion, &c.; that they were restored to the right to vote, but not to the privilege of being election officers.

The committee will state the facts as proven to which the contestant contends this law of 1862 applies, and under which he claims the vote of various precincts should be "thrown out," in addition to the precincts above named.

#### IN MASON COUNTY—ORANGEBURG.

(See page 53, Mis. Doc. No. 13, this session.) A witness testifies:

"I know W. D. Coryell, sheriff at this precinct, to be an out-and-out rebel. I heard him thank God for the destruction of the Union troops at the battle of Bull Run." Mr. Young's majority at this precinct was.....

67

#### IN BATH COUNTY—SHARPSBURG.

G. M. Coleman, sheriff, is proven to have been in the rebel army.

(See page 43, Mis. Doc. No. 13.) Mr. Young's majority was....

109

#### MUD LICK.

Robert Wells, sheriff, is proven to have been in the rebel army.

(See page 39, Mis. Doc. No. 13.) Mr. Young's majority was....

51

#### IN MONTGOMERY COUNTY—CAMARGO.

The clerk is proven to have been in the rebel army. (See page 64,

Mis. Doc. No. 13.) Mr. Young's majority was.....

132

Making Young's majority at precincts where election officers  
were rebels .....

359



It is claimed by the contestant that the vote of another precinct, to wit, Minerva, in Mason County, should be rejected, on the ground that one election judge adhered to those in arms, &c. The testimony is, said judge was, during the war, "a southern sympathizer." Mr. Young's majority was..... 65

It is claimed by the contestant that the vote of another precinct, to wit: Easterling, in Morgan County, should be rejected, for the reason that the election clerk only signed his name at the close of poll-book, and failed to sign each page as required by law. The committee will remark that this poll-book presents an honest appearance. The clerk voted for Mr. McKee, and sheriff for Mr. Young, and the judges were properly divided. Mr. Young's majority was..... 44

The committee are unable to find testimony to sustain the allegations of contestant as to any other election precinct.

The acknowledged majority, on official count, of Mr. Young was.. 1, 479

The sum total of figures above, to wit:

Young's majority where officers voted same ticket.....	929
Young's majority where officers were rebels.....	359
Young's majority where one judge was a "southern sympathizer".....	65
Young's majority where clerk failed to sign each page.....	44
	<hr/> 1, 397

Which, deducted from Mr. Young's majority, leaves him still a majority of ..... 82

#### WEST LIBERTY.

If, from that majority of 82 votes, 77 votes more be deducted, to wit: the entire vote of West Liberty, Morgan County, where it is claimed that the clerk had been in the rebel army, but as to which the testimony is not clear beyond all doubt, but believed by the committee to be an error in printing, the name "John T. Hazelrigg" appearing as clerk to the poll-book and "John T. Herzbrigg" appearing to have been in the rebel army, (see page 19, Mis. Doc. No. 13)..... 77

A majority for Mr. Young remains of .....	5
---	---

As the rejection of the precincts and votes above named would make no difference in the result of the election in this case, the committee does not feel called upon to express an opinion upon the laws, and apply the laws of Kentucky to the facts presented; therefore it reports the facts to the House.

But, that the committee may be vindicated from any suspicion of unfairness, the positions assumed by the contestant on seventeenth page of his brief are noticed. He there contends "that the whole vote of the counties of Mason, Magoffin, Bath, and Montgomery is illegal, and should be rejected because the sheriffs in the three last-named counties, whose duty it is by law to conduct the elections, were men who, at the date of said elections, were expressly prohibited from acting as officers of election, all having been officers in the rebel army," and because,



"in the county of Mason, the county judge, whose duty it is to appoint the officers and did appoint them, had been in the rebel army."

As to the three counties named together, the objection is not good, because the law prevents only sheriffs at election precincts from acting, who had been in arms, &c., or adhered, &c., or who were not of a political party different from the clerks at the same election precincts. Persons are appointed, under law of Kentucky, by the sheriffs of counties, who are also called sheriffs, and act as such at the various election precincts, and there may be a sheriff for each, and these alone are the ones affected by the law. Therefore the committee could only do as it has done, consider each precinct separately. It cannot, for cause shown, reject the vote of whole counties. A county sheriff may be legally a sheriff in Kentucky, and, at the same time, may not legally be a sheriff at an election precinct. Therefore these three counties are not rejected.

As to the fourth county named as above by contestant, to wit, Mason, the committee finds no law of Kentucky to prevent a returned rebel soldier from acting as county judge. It merely finds that election officers appointed by any county court may, in certain cases, be disqualified. This county is therefore not rejected.

Other positions of contestant need not be here further noticed, as the committee finds no positive law to sustain them. It is proven that eight deserters from the federal army voted for Mr. Young, but no law is found under which Kentucky excludes such a vote.

In view of the foregoing, the committee recommends the adoption of the following resolutions:

*Resolved*, That John D. Young, having voluntarily given aid, countenance, counsel, and encouragement to persons engaged in armed hostility to the United States, is not entitled to take the oath of office as a representative in this House from the ninth congressional district of Kentucky, or to hold a seat therein as such representative.

*Resolved*, That Samuel McKee, not having received a majority of the votes cast for representative in this House from the ninth congressional district of Kentucky, is not entitled to a seat therein as such representative.

*Resolved*, That the Speaker be directed to notify the governor of Kentucky that a vacancy exists in the representation in this House from the ninth congressional district of Kentucky.

---

#### MINORITY REPORT.

Mr. Kerr presented the following as the views of the minority:

*The undersigned, members of the Committee of Elections, would respectfully submit the following views touching the several questions of law and fact involved in the contested election case of Samuel R. McKee against John D. Young, from the ninth congressional district in Kentucky:*

It is conceded by the majority of the committee that Mr. Young, who presents himself with the certificate of election, was duly chosen by the qualified electors of said district as their representative in this Congress, and it is nowhere disputed that he possesses all the qualifications prescribed in the Constitution for that position. They nevertheless report against his being permitted to take his seat as such, because he cannot, in their opinion, truthfully take the oath prescribed by the act of Congress approved July 2, 1862. From this conclusion, as well as the grounds



upon which it seems to have been reached, the undersigned feel constrained to dissent in the most emphatic manner. But before proceeding to give their reasons for so doing, they deem it incumbent on them to notice to some extent

THE CLAIMS OF SAMUEL R. M'KEE, THE CONTESTANT.

This is rendered more necessary by the very extraordinary character of the report on this branch of the subject, which has been submitted on behalf of the majority of the committee. While they admit that in no just aspect of the case can it be pretended that Mr. McKee received a majority of the votes cast, and deny his right to the seat on a view of the whole record, yet they appear to have taken singular pains to digest the law and facts upon which he predicates his claim, and to present his argument in support of it more forcibly, perhaps, than he could have done himself. On the other hand, they seem to have sedulously refrained from presenting a single consideration contravening the views of the contestant upon any point in the case which he could hope with any show of decency to maintain, contenting themselves by stating his positions as strongly as possible, without expressing any opinion of their own as to whether such grounds are tenable or not. Why it may have been deemed proper under the circumstances to pursue this course, it is, perhaps, unnecessary for the undersigned to inquire, although it would seem that if the committee concurred in the views of law and facts taken by the contestant, justice to him required them to say so; while, on the other hand, if they differed with him, justice to the House equally demanded an expression of their reasons for dissenting.

As this must, however, take its place in the catalogue of precedents in such cases, justice to themselves, if no higher consideration, compels the undersigned to give the claims set up by the contestant a more extended notice than would have been necessary, perhaps, had the majority been more explicit in their report, and they would, therefore, respectfully consider them in the same order as has been done by the committee.

The first ground upon which Mr. McKee bases his claim to the seat is, briefly, that his competitor, Judge Young, having rendered himself incalpable of truthfully taking the oath required by the act of July 2, 1862, the votes cast for him should be regarded as thrown away, and the seat awarded to contestant. This point having been so elaborately argued, and finally settled adversely to the views of the contestant in the recent case of Smith against Brown, the undersigned are content to pass it *sub silentio*, merely adding, that the decision of the House in excluding Mr. Smith is in exact accordance with the views of the law as declared by the supreme court of the contestant's own State, in a case originating in his own county, (*Stephens vs. Wyatt*, 17 B. Mon., 547.) They would, therefore, simply remark, that they concur with the majority in the opinion that further notice of it is now unnecessary.

His second ground is, that persons who had been engaged in armed hostility to the government of the United States voted for Mr. Young, and that all such votes should be thrown out. Upon this point the majority of the committee say they are satisfied that seven hundred and sixty-seven of those who voted for Mr. Young had been in the rebel army, but add that they "have not been able to see how these votes can be rejected." The undersigned are not surprised at the inability of the majority of the committee "to see how these votes can be rejected." The only matter of wonder is how any lawyer can claim that they should be.



Each State has the exclusive right to determine who shall and who shall not be electors at her polls. The several States possessed that right before the adoption of the Constitution of the United States. They never surrendered it nor delegated to Congress or any other department of the government the power to alter or interfere with it in any way. The Constitution of the United States, article 1, section 2, provides that "the electors for representatives in Congress in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature." The constitution of Kentucky, in force when this election was held, and still in force, prescribes that all white male citizens of the State, twenty-one years of age, who shall have resided in the State two years, or in the county, town, or city in which they offer to vote one year next preceding the election, shall be electors of the most numerous branch of the legislature of that State. (*New constitution of Kentucky, article 2, section 8.*) It follows, therefore, that no vote cast for either Young or McKee can lawfully be rejected on account of the voter's participation in the rebellion, no matter to what extent that participation may have gone; and there is still less pretext for this claim of contestant's, because Congress has never assumed to declare who shall or shall not be voters in Kentucky, even granting that there are those who may be willing to go to the extent of admitting that they have that power. It is true that the legislature of Kentucky, by an act approved March 11, 1862, sought to deprive all who had participated in the rebellion of the right of suffrage, but this act was repealed by an act approved December 19, 1865, which is as follows:

SECTION 1. That an act entitled "An act to amend the fifteenth chapter of the revised statutes, entitled 'Citizens, expatriation, and aliens,'" passed March 11, 1862, be, and the same is hereby, repealed, and all persons who may have lost any constitutional, legal, or other right or privilege by operation of said act shall be, and are hereby, restored to the full and free use and enjoyment of the same, as completely as if said act had never been passed.

SEC. 2. This act shall be in force from its passage, and may be pleaded in bar of any prosecution on any indictment, or other penal proceedings growing out of said act. (Myers's Supplement, p. 687, Appendix.)

So that long before the 4th of May, 1867, when this election was held, all who had in any way participated in the rebellion were restored to all their political rights and privileges, and had all the qualifications of an elector as fully as if they had never been in the rebellion at all. What difference, then, does it make in this case whether seven hundred or seven thousand of those who voted for Young had been in the rebel army? What difference whether eight or eight thousand of them had deserted from the federal army? They were still, under the constitution and laws of Kentucky, qualified electors of the most numerous branch of the State legislature, and had as much right to vote for a member of Congress under the Constitution of the United States as either of the candidates themselves.

As the undersigned concur with the majority in the opinion that the fourth, fifth, ninth, and tenth grounds of contest alleged by Mr. McKee are utterly unsustained by the proof, they are content to pass them without further remark, and proceed to the examination of those upon which the report of the majority is more elaborate, among which the most prominent is the charge made in the sixth specification in the contestant's notice, substantially, "that the laws of the State were not complied with in the appointment of officers who conducted the elections" in various precincts in the district, and that in each of the precincts named "men acted as officers of the election who were disqualified by the laws of Kentucky from acting as officers at any election held under the laws



of the Commonwealth." The particular in which it is claimed that the law was not complied with in the appointment of the election officers seems to be that in several precincts they were not equally divided between the two political parties, and the allegation appears to be founded on the following provisions in the statutes of Kentucky :

'Each county court shall, in the month of June or July in every year, appoint two justices of the peace, if so many there be, or one justice and one other suitable person, as judges and a clerk of the election for each precinct in the county. It shall also, in the month of March or April of every second year, appoint two suitable persons as judges and a clerk of the election for each district for the election of justices of the peace and constables in the county. Such judges and the clerks shall hold their offices till their successors are appointed and qualified. \* \* \* \*

Should the court fail to appoint such judges or clerk, or either fail to appear for thirty minutes after the time for commencing the election, or refuse to act, the sheriff or his deputy shall appoint a suitable person or persons to act in his or their stead for that election. (Vol. 1, p. 432, Rev. Stat. of Kentucky.)

[Myers's Supplement, p. 456.]

AN ACT to amend section 1, article 3, chapter 32, title "Elections," of the Revised Statutes.

*Be it enacted by the general assembly of the Commonwealth of Kentucky,* That hereafter, so long as there are two distinct political parties in this Commonwealth, the sheriff, judges, and clerk of election in all cases of election by the people under the Constitution and laws of the United States, and under the constitution and laws of Kentucky, shall be so selected and appointed as that one of the judges at each place of voting shall be of one political party, and the other judge of the other or opposing political party; and that a like difference shall exist at each place of voting between the sheriff and clerk of elections: *Provided,* That there be a sufficient number of the members of each political party resident in the several precincts as aforesaid, to fill said offices. And this requirement shall be observed by all officers of this Commonwealth who have the power to appoint any of the aforesaid officers of election, under the penalty of a fine of one hundred dollars for each omission, to be recovered by presentment of the grand jury.

MARCH 15, 1852.

AN ACT to amend an act entitled "An act to amend section 1, article 3, chapter 32, title 'Elections,' of the Revised Statutes," approved February 11, 1858.

SECTION 1. That in construing the act approved February 11, 1858, to which this is an amendment, those who have engaged in the rebellion for the overthrow of the government, or who have in any way aided, counselled, or advised the separation of Kentucky from the federal Union by force of arms, or adhered to those engaged in the effort to separate her from the federal Union by force of arms, shall not be deemed one of the political parties in this Commonwealth within the provisions of the act to which this is an amendment.

SEC. 2. This act to take effect from and after its passage.

On this point the majority of the committee make up the following summary, which they submit without intimating an opinion as to the legal conclusion to be drawn therefrom, or whether the votes therein mentioned should be rejected or not:

At Mayslick the poll-book shows that the sheriff and clerk voted the same ticket, and Young's majority was.....	172
At Maysville, No. 1, the poll-book shows that both judges voted the same ticket, and Young's majority was.....	131
At Germantown the poll-book shows that the sheriff and clerk voted the same ticket, and Young's majority was.....	86
At Maysville, No. 2, the poll-book shows that all the officers voted the same ticket, and Young's majority was.....	112
At Lewisburg the poll-book shows one judge, the sheriff, and clerk voted the same ticket, and Young's majority was.....	148
At Washington the poll-book shows that the sheriff and clerk voted the same ticket, and Young's majority was.....	69



At Ruin the poll-book shows all the election officers voted the same ticket, and Young's majority was .....	73
At Caney the poll-book shows three election officers voted the same ticket, and Young's majority was .....	58
At Elizaville one judge, the sheriff, and clerk are proven to be democrats, and Young's majority was .....	80
Making a total of .....	929

It will be observed from reading the first extracts from the laws of Kentucky above quoted, that all these officers must have been appointed in June or July, nearly a year preceding this election, which was held on the 4th day of May, 1867, for there is not a syllable of proof to the contrary, and, in the absence of such proof, the presumption of law is that the statute was complied with. It will also be observed, upon examining the foregoing summary made by the committee, that the only evidence from which their political status at the time of their appointment can be inferred, is in the manner in which they voted nearly a year afterwards, as shown by the poll-books, except as to the officers at the Elizaville precinct; and the undersigned would therefore submit that there is an utter failure of proof that the officers at the various precincts mentioned did not, at the time of their appointment, belong equally to the two political parties, and that, in the absence of proof to the contrary, the legal presumption is that the court or officer by whom they were appointed complied with the statute in such cases provided. The mere fact that a man voted for a particular candidate at a certain election is by no means conclusive that he belongs to the same political party with that candidate, and it is still less evidence as to what his political sentiments and affiliations were a year before. The able and distinguished chairman of the Committee of Elections has exposed the utter absurdity of the contestant's claim upon this point in the following paragraph, extracted from his report, in the recent case of *Blakey vs. Golladay*:

The attention of the committee has not been called to any provision in the statutes of Kentucky prescribing in what manner the several county courts are to define political parties and ascertain the exact political faith of each appointee, so as to enable them to comply with the provisions of these statutes. Obviously they cannot resort to the poll-book of the next election, the test to which the claimant has appealed to show that the statutes have been disregarded, for they are required to make the appointments long before these poll-books have any existence. No poll-book of an election to be held *after* the appointment is made, can afford evidence to guide in making the appointment. If resort is to be had to the poll-book of the election next preceding the appointment, to determine the political *status* of the several appointees, then, for aught that appears in this case, those poll-books would show that status to be what the law requires, for no evidence from these poll-books or elsewhere was offered to show how these several officers of election voted at the election next preceding their appointment. If personal knowledge of the political opinion of men on the part of the county judges, or general political reputation, are to be the guide in making the appointment of the officers of election, it is difficult to see in what manner this committee could determine that the statute had not been complied with in making the appointment. It is sufficient, however, to say that there was no offer of evidence that any such test was disregarded.

Besides, it should be borne in mind that it is nowhere insinuated, either in the allegations or the evidence, that either of these officers failed in any particular to discharge his duties faithfully, honestly, and impartially; that there is not an iota of evidence that Young received a single vote more, or McKee a solitary vote less, than if they had not been appointed. Wherefore, then, should the votes of these several precincts, honestly and fairly cast, truly and impartially returned, be



rejected, even if it should be admitted that all the officers of the election belonged to the same party? What reason can be suggested for such a proceeding in justice, morality, or a decent regard to the freedom of the elective franchise, the corner-stone of civil liberty? But even granting that all the election officers in these precincts belonged to the same political party at the time of their appointment, and still the objection urged by the contestant on that account, to the validity of the votes cast, is utterly futile. He admits that they were appointed by the officer or court legally authorized to do so, and, therefore, whether they were qualified according to the strict letter of the statute, or not, they exercised the functions of their several offices under color of authority. In a word, they were officers *de facto*, and their acts, in so far as the public or third parties who have an interest in them are concerned, are as effectual and valid as if they had been officers *de jure*. There is, perhaps, not a principle better known to our entire system of jurisprudence than this. It was never doubted, even in England, where the statutes against the appointment of persons to office who have not taken the oaths of supremacy, abjuration, &c., are remarkable for their stringency, and it has, perhaps, never been questioned by any intelligent court in this country; on the contrary, it has been repeatedly affirmed by the supreme court of almost every State in the Union, as well as by the federal courts. Out of the immense number of American cases in which this doctrine has been emphatically stated as the law, the undersigned deem it sufficient to cite the following: *Commonwealth vs. Fowler*, 10 Mass., 301; *Mason vs. Dillingham*, 15 Mass., 170; *McGregor vs. Bach*, &c., 14 Vermont, 428; *Cummings vs. Clark*, 15 Vermont, 653; *Keyler vs. McKissom*, 2 Rawle; *Neal vs. Oversears*, 5 Watts, 538; *Bond vs. Bank of Washington*, 11 S. & R., 411; *McKean vs. Summers*, 2 Penn., 297; *Barret vs. Reed*, 2 Ohio, 410; *Johnson vs. Stedman*, 3 Ohio, 96; *Elden vs. Sexton*, 5 Ohio, 216; *St. Louis Co. vs. Sparks*, 10 Mo., 117; *Pritchett vs. People*, 1 Gilm., Ills., 529; *Cook vs. Hall*, 1 Gilm., 580; *People vs. Ammon*, 5 Gilm., 170; 13 Mich., 527; 1 Mon., (Ky.), 297; *People vs. Cook*, 14 Barb., 245.

In view of this obvious and well-settled principle of law, and the fact that it is not pretended anywhere that a single vote would have been different in either of the precincts, it is not only impossible for the undersigned to discover upon what principle of law, justice, or morality the contestant could ask that the entire vote of these precincts should be rejected, but they are amazed that the majority of the committee should have suffered themselves, even by their silence, to have become committed to a tacit acquiescence in such a result. If it is to be established in this country that the popular voice, expressed in a fair, open, honest election, conducted strictly according to the forms of law, by those whom, not only the candidates but the electors know to have been appointed by the proper authority, is to be stifled, and the election declared invalid, because the person appointing the officers of the election may have been mistaken in the politics of some of them, then the elective franchise is simply a miserable cheat, an unsubstantial, empty, worthless shadow.

But the contestant goes even further, and claims that the votes in the precincts of Orangeburg, Sharpsburg, Mud Lick, and Camargo should be rejected; not because there was not an equal distribution of the election officers between the two political parties, but because the sheriffs in the first three and the clerk in the last one had been rebels; and, refining upon this again, he asks that the vote of Minerva precinct shall be rejected because one of the judges of the election had "adhered"



to the rebel cause. This last demand would no doubt be regarded by any ordinary mind as the climax, had not Mr. McKee gone still further, and insisted that the entire vote of Mason, Montgomery, Magoffin, and Bath should be swept away because the sheriffs of those counties had been rebels.

It is a sufficient answer to all this to say that there is no law in Kentucky disqualifying a man from acting as an officer of an election, sheriff of a county, or in any other office in the State, on account of his having been in the rebel army; and, besides, if there were, these were, to say the least of it, all officers *de facto*, duly appointed and acting regularly under color of authority. No complaint is made that either of them acted unfairly, or that either candidate was benefited or injured by their official action, and, therefore, according to the principle above stated, their acts are as valid, so far as the public and the parties to this contest are concerned, as if they had been officers *de jure*.

In conclusion upon this branch of the case, the undersigned would say they find Mr. Young's majority, as officially reported, to be 1,479 votes. They have been unable to discover the slightest taint of fraud or fraudulent voting in any precinct in the entire districts; they have seen nothing to justify even a suspicion that a single election officer complained of failed in any manner to discharge his duties faithfully, fairly, and honestly. They have found no satisfactory proof that their appointments were not made, in a majority of the instances complained of, in strict conformity to the letter of the statute. They find that all the officers of the election acted under color of authority, at least, and that neither they, the contending candidates, nor the electors questioned their authority at the time to act; and that the returns express the will of the people, untainted by even a suspicion of fraud. They therefore conclude that the contestant, Mr. McKee, has not even the shadow of a claim to the seat.

The undersigned, therefore, proceed to give their views in relation to

#### THE RIGHT OF JOHN D. YOUNG TO THE SEAT.

As is well known, they have steadily contended that the act of July 2, 1862, being one peculiarly penal in its character, should be strictly construed. This principle of construction, so universally observed wherever our system of jurisprudence obtains, is particularly appropriate in this instance, for here the statute is resorted to, not only to deprive Mr. Young of a highly valued and important right, but to defeat the will of the majority of the qualified electors of his congressional district, fairly and constitutionally expressed at the polls, and is made the pretext of introducing a new and dangerous limitation upon the fundamental right of representation unknown to the Constitution. This statute provides that every person who shall falsely take the oath therein prescribed shall, "*on conviction*," in addition to the penalties now prescribed for that offense, *be deprived of his office*, and rendered incapable forever after of holding any office or place under the United States. (Stat. at Large, vol. 12, p. 502.) Even a liberal construction of this provision would seem to secure to the person accused of a violation of the act in question the right to enter upon and hold his office, until *convicted*, in pursuance of the forms of the Constitution, of having falsely taken the oath; for, by the very terms of the act, he is to be deprived of his office only upon conviction, and the power to deprive him of it before that takes place is nowhere conferred upon any one. It would seem to be manifest, too, that Congress, by the enactment of this law, meant simply to pro-



vide for the exclusion of those from office under the government of the United States who had been guilty of treason, as defined in the Constitution, and not to introduce into this country the odious doctrine of constructive treason, everywhere and in every age the favorite engine of tyrants; for there is not an idea embraced in the oath prescribed that is not contained in the definition of treason as laid down in the Constitution. To say the least of it, therefore, justice to Mr. Young and his constituents, as well as a decent regard to the manifest spirit and meaning of the statute itself, would suggest that in this proceeding, unauthorized by the terms of the law, before he should be excluded from his seat his guilt of some open act of active disloyalty, coming clearly within the terms of the oath, should be made to appear by the same amount and character of evidence as would be required to satisfy an impartial jury, to the exclusion of a reasonable doubt, that he had been guilty of perjury, had he already taken the oath.

The Committee of Elections, in their report on the other Kentucky cases, have expressed nearly the same idea, as will be seen in the following brief extract:

That in our government the right of representation is so sacred that no man who has been duly elected by the loyal voters of his district should be refused his seat upon the ground of his personal disloyalty, unless it is proven that he has been guilty of such open acts of disloyalty that he cannot honestly and truthfully take the oath prescribed by the act of July 2, 1862; and further, that the commission of such acts of disloyalty to the government should not be suspected merely, but should be proven by clear and satisfactory testimony; and that "such acts must have been so overt and public, and must have been done or said under such circumstances, as fairly to show that they were actually designed to, and in their nature tended to, forward the cause of the rebellion."

The majority of the committee contend, however, that the evidence in this case brings it directly within these rules, and the draughtsman of their report seems to have been at especial pains to cull out every circumstance and innuendo that could be found in the entire mass of printed testimony, calculated to incite a prejudice against Mr. Young, although, when fairly and candidly considered, such things are found to amount to no proof at all. From this conclusion, as well as the process of reasoning by which it appears to have been reached, the undersigned feel compelled to dissent.

The record shows that the contestant has from the beginning exhibited a singular zeal, and used extraordinary exertions to procure the exclusion of Mr. Young from his seat, and the whole case indicates that he never suffered his vigilance and industry to relax a moment during its progress. The entire congressional district was ransacked for evidence of the disloyalty of his competitor. Over one hundred witnesses were examined, a large majority of whom were Mr. Young's political enemies and Mr. McKee's political friends. Yet, it may be confidently asserted that not more than three or four of the witnesses testify to a single act or expression on the part of Mr. Young which, by any kind of torturing, can be brought within the rule laid down in the report in the other Kentucky cases submitted by the gentleman from Illinois, (Mr. Cook.) The evidence has all or nearly all been printed, and it is presumed the House has read it; and if so, they have found that the vast bulk of it is the flimsiest hearsay. Some of the witnesses testify to mere casual street conversations which took place more than six years before, which were, from anything which appears in the evidence, neither intended nor calculated to "forward the cause of the rebellion," while many others testify simply as to their own opinions of Young's political status, without stating any facts upon which those opinions



were founded. The undersigned cannot, of course, be expected to analyze, or even advert specifically to the testimony of each of the witnesses examined; but they will be pardoned for alluding to the evidence of those referred to by the majority in their report, namely, William S. Sharp, (House Doc., p. 62,) G. W. Parsons, (Ibid., p. 59,) W. H. T. Moss, (Ibid., p. 65,) and James Hall, (Ibid., p. 72.)

Mr. Sharp says:

I live in Sharpsburg, Kentucky. I know Mr. Young. I cannot say that I ever knew him to do any disloyal act. He was, however, looked upon in our community as a sympathizer with the rebellion. I had orders from General Boyle to summon all disloyal or suspected persons to take the oath of allegiance to the government of the United States. Having information that Young was of that class of men, I notified him to appear at my office, which he did. In an interview with him he took the ground that the war was not a rebellion, but a revolution. I recollect distinctly asking him if he thought the South had just cause for the revolution. He said he thought it had. I then told him that I considered him a disloyal man; that I had to go to Louisville on business; that I would lay his case before General Boyle, and that whatever General Boyle said should be done, should be done. I paroled him for a certain number of days. I went to Louisville; laid Mr. Young's case before General Boyle, and was ordered by him to send Mr. Young to Camp Chase. On my return to Sharpsburg, I was detained at Frankfort as a witness, and when I got home the day appointed for Mr. Young to appear was past. I understood he had been there. After that I saw no more of him for six months or a year. He left Bath County. Where he went, or why he went, or on what business, I do not know.

Mr. Parsons says:

One day Mr. Young staid for dinner at the residence of Mr. Gill, at Olympian Springs. I was there. After dinner Mr. Gill, Mr. Young, and myself got into conversation on the subject of the war. It was after Mr. Lincoln had called for seventy-five thousand men, and that was the subject of the discussion. Mr. Young took position against the action of the President, and remarked, among other things, that Mr. Lincoln ought to be impeached and hung as high as Haman. I asked him what ought to be done with Jefferson Davis, and he said "nothing;" that Mr. Davis had violated no constitutional obligation.

Mr. Moss says:

I live in Owingsville, Kentucky. Mr. Young was considered a rebel sympathizer in our country. I was a near neighbor of his. I was a Union man, and in favor of putting down the rebellion. My understanding was that Mr. Young was not—that he belonged to the State rights party—southern men, as they called themselves. I do not know of any disloyal act that Mr. Young ever committed. Mr. Joshua Ewing, and Mr. Young, and a crowd were chatting in the street one morning, and I heard Mr. Young remark to Mr. Ewing: "I expect to have a company in South Carolina to fight the Yankees, and I expect to take your boys with me." Ewing replied: "Perhaps you will. If you do not like this country you had better leave."

Mr. Hall says:

He was once missing out of the town, and when he came back I understood from him one day in conversation that he had been at Prestonburg. He stated there was a pretty good body of men there, and that they were getting pretty well drilled, and that the Union men had better look out, as they would come down upon them some day like a house on fire, or something of that kind. That was in the fall or winter of 1861. I saw a basket of provisions leave his house one morning about daylight; a black man brought it out and put it in a cart, and it was driven away towards Boyd's, where there were some one hundred and forty rebels assembled. I saw a good many others putting provisions in the cart; Mr. John Miller was along with me at the time, I think, but I am not positive: I did not see what was in the basket; I asked the black man if there were provisions in the basket, and he said yes. The cart went on toward Boyd's.

To Mr. KINKEAD:

I do not know whether the rebels sent over to town and demanded provisions. I think the cart was Harry McKinney's one-horse cart. I do not recollect who the black man was who was driving.

Q. You state in the affidavit which you made that the cart was Mr. Young's cart.—A. I may have stated so; I do not know whether it was his or McKinney's, but I thought it was McKinney's. I do not know the circumstances under which these provisions were sent off; that is the only act of aid to the rebellion that I know of Mr. Young committing. I was a Union man from the start.



Now, if the rule already laid down by the committee and approved by the House, that these expressions, in order to have effect of excluding Mr. Young from his seat, must have been made "*under such circumstances as fairly to show that they were actually designed to, and in their nature tended to, forward the cause of the rebellion,*" is to be observed, it is impossible to discover how his claim is to be affected by them.

His remarks to Mr. Sharp were made under such circumstances as to absolutely repel any such hypothesis. Sharp was acting provost marshal. He was in the habit of summoning before him whomsoever he saw proper, and tendering to them the oath of allegiance to the government of the United States, for which he charged them the moderate fee of from *five to twenty-five dollars*, according to the ability of the party to pay, as he testifies himself. He had called Judge Young before him, to offer him the oath and receive his fee, and was examining him with a view of testing his loyalty by his own statements, and the remarks attributed to him were made use of, if at all, during the course of that examination, within the hallowed precincts of a provost marshal's office, and in the sole presence of one whose *loyalty* was remunerated by a *carte blanche* to extort money from his neighbors *ad libitum* for the high privilege of swearing allegiance to their own government. They were not even voluntarily made, but extracted from him by the provost marshal in the exercise of his high inquisitorial functions. And will it be pretended then that these circumstances "*fairly show*" that in making use of these remarks Mr. Young "*actually designed*" to, and that his remarks "*in their nature tended to, forward the cause of the rebellion?*" Perhaps he may have been intending to seduce Mr. Sharp to descend from the exalted pedestal of power, resign the golden harvest of perquisites, and throw himself into the arms of the unpromising cause of the enemy, but it must be confessed that such a supposition is not very probable.

Nor is there any more ground for presuming that the other expressions testified to were designed or tended to forward the cause of the rebellion. In the conversation with Mr. Parsons, at Mr. Gills, Mr. Young simply expressed the opinion that Mr. Lincoln should be impeached for his call of seventy-five thousand soldiers. In doing this he only stated the logical results of positions assumed by the most distinguished statesmen in Congress but a short time before. He said nothing calculated or intended to persuade any one to take up arms against the government, and there was no one present who had actually done so, and who might have been thereby encouraged to persevere in his rebellion.

Nor can it be maintained that the conversation with Joshua Ewing, in 1861, detailed by Mr. Moss, comes within the rule laid down by the committee. To say nothing of the danger of predicating any important decision upon evidence of a casual conversation, six or seven years after it took place, arising from the defects of human memory, and the liability to misunderstand as well as misinterpret what was said, but admitting that he used the exact expression attributed to him, and still there is not a syllable in the proof to justify the conclusion that it was either "*actually designed or in its nature tended to forward the cause of the rebellion.*" On the contrary, it will strike the candid mind simply as an idle expression made to an intense Union man in order to irritate him, and nothing more. There is no proof that Young said anything in that entire conversation either intended or calculated to induce any one to take up arms against the United States, or to continue in his hostility thereto if actually engaged in the rebellion. The inference is, further, that this remark, if made at all, was long before the war became flagrant



or had in fact begun, and while the scene of difficulty was confined to South Carolina; else why should he have said he expected to have a company in that State? But this testimony has been cited by the committee no doubt to create the impression that Young influenced Ewing's sons to join the rebel army. That this insinuation is, however, not only unfair, but in the very face of the proof, will be seen by reference to the testimony of the Ewings themselves. If any one in the world knew whether Mr. Young had induced them to go into the rebel army, they of course did. Yet Henry Ewing swears that he knows nothing of Young's disloyalty. "Mr. Young had nothing to do with inducing me to join the confederate army." (See H. Doc. No. 47, p. 60.) And George M. Ewing testifies, on the next page, that he "never heard Mr. Young encourage *any* man to go into the southern army."

With regard to the conversation detailed by James Hall, the undersigned can only express their amazement that any one should refer to it as a proof of disloyalty, much less that the remark there attributed to Mr. Young should be considered as intended "to forward the cause of the rebellion." The very opposite is the truth. Instead of trying to induce Mr. Hall to take up arms against the government, or espouse the cause of the rebellion, he tells him that he has been to Prestonburg; tells him that there was a body of men there, and warns him as a Union man to be on his guard, as they were getting to be pretty well drilled. But this fact was, perhaps, elicited to create the impression that Young went to Prestonburg to assist in the organization of the rebel force being at that time collected there. And it may have been alluded to in the majority report for a similar reason. But what are the facts? Young never denied being there, but always declared that his intention in going there, so far from being to assist or encourage the organization, was to persuade his brother-in-law not to go into the rebel army. Henry Ewing, who was there at the time, says: "I understood at the time Mr. Young was at Prestonburg that his object was to get his brother-in-law to go home." George M. Ewing, who was also there, testifies as follows:

I live in Owingsville, Kentucky. I always looked upon Mr. Young as a southern sympathizer. I know nothing of his acts. He never took any part, that I know of, in raising troops for the South. I never heard him encourage any man to go into the southern army. I heard him declare himself a State rights man, but never that he was in favor of the confederacy. I joined the rebel army in September, 1861. I do not know anything of Mr. Young's being an applicant for a position in the rebel army. I heard it reported that he ran for colonel of my regiment at Prestonburg, but there was no regimental election at all. In the spring of 1866, when he was running again for county judge against Mr. Wylie, I was electioneering against Mr. Young, and I said that Wylie had gone to Prestonburg and stuck to the army for four years, but that Young had gone there and had nearly broken up the regiment by taking men off instead of letting them stick to the army, and that, therefore, I was opposed to him.

A singular way, truly, to promote the cause of the rebellion, by breaking up one of its regiments "by taking men off instead of letting them stick to the army!"

Much has been said about Young's having been a candidate for colonel of the regiment then being organized at Prestonburg; and before leaving this testimony of George M. Ewing, the undersigned would call attention to the fact that he explodes the whole idea, by stating that there was no regimental election there at all.

The undersigned presumes that the statement of Mr. Hall with regard to the "basket of provisions" will not be taken by an intelligent jurist as evidence of anything except the mere fact that he may have seen a negro with a basket. He does not even know what was in the basket; the negro only told him. He does not say that it was intended for the rebels at Boyd's or that he knows it ever reached them; and, what is



more material than all, he neither says nor intimates that Young was at home at the time, or, if at home, that he knew a syllable about what the negro was doing with the basket, what he intended to do with it, what it contained, or anything about it. Whatever may have been the motive or intention of the transaction, it nowhere appears that Young had any knowledge of or connection with it whatever. And the same is true of the testimony of the negro man, Spotswood Deadman, upon which the committee seem to have arrived at the conclusion that Mr. Young actually gave aid and comfort to the rebellion.

The witness testifies as follows:

By Mr. McKEE:

Question. Where do you reside?—Answer. At Mt. Sterling, Kentucky.

Q. What do you know of Mr. Young's loyalty during the war?—A. When the rebels were passing through Owingsville, where I was then living, and where Mr. Young lived, he took a very active part in feeding them and conveying provisions to them. He always talked in favor of rebellion, and when rebels were passing through he would take them to his house and feed them. He also swapped a horse with Colonel Morgan, who was in the rebel service.

By Mr. KINKEAD:

Q. What do you know about Mr. Young feeding rebels?—A. I saw provisions going from his house, and saw him taking rebels to the house.

Q. Did not Union men give the rebels something to eat?—A. Of course they did. They were forced to do so.

Q. Is that the only aid you know of Mr. Young giving to the rebellion?—A. I believe it is.

By Mr. McKEE:

Q. At the time you speak of, when Mr. Young sent provisions to the rebel camp, nobody was forced to feed them unless he chose?—A. No, sir.

Q. It was a voluntary act?—A. It was voluntary.

Q. There had been no force used on either side up to the time General Nelson came into the State?—A. No, sir.

By Mr. KINKEAD:

Q. When was it that you speak of?—A. In 1861, at the commencement of the war, I saw Mr. Young's boy, Louis, carrying provisions to the camp, which was about two miles out.

Whether this witness is more intelligent than the general mass of negroes in Kentucky it is not necessary to inquire, but the undersigned would invite attention to the character of his statements, and let candid and impartial minds determine for themselves what weight they are entitled to. He says: "When the rebels were passing through Owingsville, where I was then living, and where Mr. Young lived, he took a *very* active part in feeding them and in conveying provisions to them."

But what does this "*very* active part" which Mr. Young took in feeding the rebels turn out to be? When sifted down, it seems, according to his own statements, that "in 1861, at the commencement of the war, he saw Mr. Young's boy, Louis, carrying provisions to the camp, which was about two miles out." How often? Let him answer himself:

By Mr. Cook:

Q. About how often did you see food going out from Mr. Young's house to those camps or squads of rebels?—A. Two or three or four times.

The broad assertion which this witness makes with such avidity, that Mr. Young "took a very active part in feeding rebels, and conveying provisions to them," seems to have been justified in his mind by having seen another person altogether—the "boy Louis," two or three or four times, "carrying provisions to the camp, which was about two miles out;" but does he show that Young had anything to do with it? Does he state the quantity or kind of provisions, or that Young ever knew of their being carried to the camp? Does he state how he knows that the



provisions ever went to the camp at all, which was two miles out? But where is the "boy Louis?" He could have told whether Young sent him with the provisions, and surely his testimony was not omitted by the contestant on account of his color, race, or condition, and his industry in hunting up other witnesses justifies the conclusion that if he would have testified to anything to Mr. Young's prejudice, Mr. McKee would have produced him. "He would take rebels to his house and feed them," says Deadman; yet how does he know whether they were fed or not? He may have seen rebels going to Young's house in company with Young, but does it necessarily follow that Young fed them or encouraged them in their enterprise in any way? He says that Young swapped horses with Colonel Morgan; yet Morgan himself swears that Young consented to or rather suggested this arrangement to save the horse of some of his Union neighbors, less able to lose him—an act which should rather be applauded as one of neighborly kindness and generosity than paraded as an evidence of disloyalty and treason. Taking the whole of Deadman's testimony together, the undersigned are utterly unable to find that it furnishes anything like satisfactory evidence of an act or expression calculated or intended to forward the cause of the rebellion; and, besides, it should be borne in mind, while considering the testimony of Hall and Deadman, that it is proven by John Trumbo and others, that while the rebels were encamped at Boyd's, in 1861, they sent into town and compelled the citizens to send them food. It may be conceded that the boy Louis did take provisions out to the rebel camp two or three or four times, in 1861; that rebels were seen in Young's company, and going to his house; yet the undersigned insist that there is not an iota of proof that Young even knew that the provisions were sent, or that he ever spoke a word of encouragement to the rebels; and surely it will not be said that a man whose integrity even his political enemies speak of as unimpeachable, shall have a stigma cast upon his good name, be deprived of the position to which he has been fairly elected, and his constituents deprived of their right to be represented by the man of their choice, on such flimsy, unsatisfactory, and incoherent evidence as this.

The next charge which the majority of the committee seem to have come to the conclusion "is made to appear by clear and satisfactory evidence," is that Mr. Young pointed out a Union soldier to some rebels, who captured him and carried him off at Young's suggestion. The only witness who testifies to this fact is Greenup Nickell, who relates the circumstance as follows:

In the spring of 1863 I was on my way from Mount Sterling, Kentucky, home. After passing Owingsville, between Owingsville and State Bridge, I was met by a squad of confederate soldiers, as they called themselves, in number from fifteen to twenty, as near as I remember. They told me they were going to Owingsville, and did not allow anybody to go out until they got ready, and that I must go back with them, which I did. After they rode into the town, there was a pretty general rushing of the town people, who came up or out to see them. Among others who came, there was a certain gentleman came down toward where I was, and up to the men who had me in charge, and close by where I was standing; he was pointing his finger in the direction of a certain house, and named the house, but I don't now remember the name of said house, and told the men that in that house there was a "Yankee soldier," and to go for him, which the rebel soldiers did. A part of the lot went to the house, and some who remained near me turned toward the gentleman, whom I did not know, and spoke to him, and said: "How are you, Judge Young?" This same man whom they called Judge Young, and a part of the rebel soldiers, turned away from me and engaged in conversation in rather a lower tone of voice than at first. I did not hear what was then said, but in a very short time a part of the same men went off, and in a few minutes returned with some horses, upon one of which they mounted the prisoner they had taken, and soon after moved off. Before they returned with the horses, the man whom they called Judge Young went off, and I did not then again see him any more.



Before proceeding to examine this statement, it should be remarked that the testimony of this witness was taken under very singular circumstances. It seems, from an examination of the numerous notices served in this case, that Mr. Young was first notified that the deposition of Greenup Nickell would be taken in Carter County, on the 4th of September. (See H. Doc. 13, pp. 88, 89.) Mr. Young attended, and the witness was not produced. Mr. McKee then gave notice that he would take the deposition of Nickell in Rowan County, on the 30th and 31st of October. Mr. Young's attorney was present to cross-examine, and again the witness was not produced. (H. Doc. 13, p. 75.) Mr. Young, on the 26th day of August, had notice served on Mr. McKee that he would take the deposition of Thomas W. Green, in Maysville, Mason County, on the 14th and 15th days of November; and on the 2d day of November, Mr. McKee again gave notice that he would take the deposition of this witness at Morgan County, on the 13th and 14th of that month, when it would be impossible, in the very nature of things, for Young to reach there from Maysville, or go from there to Maysville, in time to take the depositions at the latter place. Had Nickell known Young personally, there would, perhaps, have been nothing at all peculiar in the circumstance that his attendance could not be procured until Young was compelled to be absent, but it does become somewhat suspicious when taken in connection with the following statement in his testimony:

Question. Have you seen him since? and if so, state the circumstances.—Answer. I don't know whether I have ever seen him since or not, but at February court, just previous to the May election last, I was in court in the court-house at Moorehead, and while the court was going on I heard some one speak out, "How are you, Judge Young?" I was at once reminded of the same expression I had heard at Owingsville, and turned to see who it was. Tom Hayes, who had been a captain in the rebel army, was standing near, and I took him to be the man, from the voice, who then addressed the man he called Judge Young. I was not acquainted myself with Judge Young, but when I saw him there in the court-house at Moorehead, I took him to be the same I had seen at Owingsville, and believe that he was the same man. These are the only two times I have seen Judge Young, if this was him.

Could Young have been present and the witness been compelled to meet the question face to face, "Is this the man to whom you allude?" his answer might have exploded his whole testimony, just as Willis Hockaday's affidavit was when he was brought face to face with Young. But the statement of this witness does not seem to the undersigned to carry the air of truth upon its face. It has the limping, uncertain style of one who is conscious of swearing to a falsehood, who has a general idea of the outline of the lie he is to tell without having fixed up the minute details. He says, "After they rodé into town, there was a pretty general rushing of the town people, who came *up* or *out* to see them. Among others who came, there was a *certain gentleman* came *down* toward where I was, and *up* to the men who had me in charge, and *close by* where I was standing; he *was pointing* his finger in the direction of a *certain house*, and named the house, but I don't now remember the name of said house," &c. This does not look like the simple, unvarnished language of truth. He carefully forgets the name of the *certain house*; cannot mention the names of any of the crowd who "came *up* or *out*;" and, besides, he is careful to place Jo. Wells, the only man he recognized at all, so far off as not to be able to see or hear the "*certain gentleman* who came *down* toward where he was, and *up* to the men who had him in charge, and *close by* where he was standing." Superadded to these suspicious features, this witness is proven by Judge Moore, a lawyer of this city, who testifies to having known him well while he, Moore, was



county judge in Kentucky, to be a man of notoriously bad character, and utterly unworthy of belief on oath; and besides all this, such conduct as the testimony of this witness would, by implication, attribute to Mr. Young, is utterly inconsistent with his whole course during the war. John Trumbo swears that Young "exerted himself to have *him* paroled when he was captured by Morgan's forces at Owingsville," when it was dangerous for him to make the journey for that purpose; that he also tried to procure the release of James Murray, and that he always manifested a willingness to assist in protecting the people of the town against outrages by confederate soldiers. (H. Doc., p. 80.) D. B. Lacy swears that Young was of service to him on one occasion when he was in danger from the rebels. (H. Doc., p. 81.) Joseph H. Richards testifies that he constantly interfered for the protection of Union men and all quiet citizens, (H. Doc., p. 82;) that he interfered to prevent the robbing of Mr. Brother's store. Judge N. P. Reid, of the circuit court, A. J. Lee, James Murray, all of them Union men, near neighbors of Mr. Young during the war, testify substantially that he did everything in his power for the protection of Union men; and Colonel Morgan testifies to his exertions in behalf of Mr. Barnes. Even Mr. Sharp testifies that Mr. Young warned the messenger who had been sent to summon him to appear before the provost marshal, of danger on account of the proximity of rebels, and advised him how he might avoid it. It is deemed unnecessary, however, to multiply citations from the evidence before the House, showing that Mr. Young's course throughout the war was that of a peaceable, law-abiding, good citizen, disposed to do everything in his power for the protection of all classes. The undersigned must, therefore, be pardoned for not believing that he could have, in this instance, so far departed from this course so universally known among his neighbors as to have been instrumental in the capture of a man whom nobody but Nickell ever heard of, and he even fails to name. Surely, if Young had taken the oath, and were on trial for having taken it falsely, no gentleman would hesitate as a juror to acquit him of perjury if the charge were sustained alone by the testimony of Nickell. Then why should he be deprived of his seat in Congress on that testimony, when the law declares that he shall forfeit it only on *conviction* of having falsely taken the oath, if indeed the oath applies to a member of Congress at all?

With regard to the gun at Prestonburg, the only evidence is that of Henry H. Ewing, which is as follows:

HENRY H. EWING sworn and examined.

To Mr. McKEE:

I live in Owingsville, Kentucky. I am acquainted with Mr. Young. I do not know anything about his disloyalty. I believe he was a southern sympathizer. He was at Prestonburg when there were a parcel of men there collected to be organized into the confederate service. They were not organized at the time. I have no knowledge of Mr. Young having been a candidate for an office in that organization. I do not know that he had a gun there. He showed me a gun standing in the porch of the house where he was staying, and asked me to take care of it. He said, "There is a good gun; take care of it." He never spoke to me about going into the rebel army.

To Mr. KINKEAD:

I am a son of Mr. Joshua Ewing. I and my two brothers were in the confederate army. Mr. Young had nothing to do with inducing me to join the confederate army. I understood, at the time that Mr. Young was at Prestonburg, that his object was to get his brother-in-law to go home.

To Mr. SCOFIELD:

I took care of the gun for three or four weeks, and then, when I was coming home, I gave it to a cousin of mine in the army, and I think he sold it. I afterward went back



to the army, and staid till the surrender. The gun was a Minié rifle. I do not know why Mr. Young brought it there. He never inquired of me what became of it. I never told him.

To Mr. KERR:

I do not know whether Mr. Young knew I was going into the rebel army.

To Mr. McKEE:

Guns were scarce there at the time. There were no guns there of any consequence.

From this testimony the majority of the committee seem to have drawn the inference that Mr. Young had taken the gun to Prestonburg and given it to Henry Ewing, but to the undersigned it bears a very different interpretation. It does not show that Young owned or claimed the gun, or that he carried it there. It is true the author of the committee's report seems to lay much stress upon the witness's answer to a question by Mr. Scofield: "I don't know why Mr. Young brought it there;" but the undersigned submit that such is not a fair mode of dealing with the testimony. The witness had just testified that he did not know that Young had a gun there at all, and, of course, when his interrogator assumed that he *had* brought it there, and asked *why* he did so, the witness could only answer that he did not *know*, without desiring to be understood as saying that he had in fact done so. But treat this evidence fairly, candidly, and impartially, and it amounts simply to this and nothing more: Young had gone to Prestonburg, not to assist in the organization of rebel troops, but to persuade his brother-in-law to go home; that so far from assisting or encouraging the organization of rebel troops, his influence was against it, as is clearly shown by the evidence of George M. Ewing, already quoted, who afterward opposed his election for county judge in 1865 on that account; that there was a gun sitting in the porch of the house where Young was staying. No one states who brought it there, or when it was brought there, and, as no one seemed to claim it, Young simply remarked to Ewing that there was a good gun, and suggested to him to take care of it. Young was not staying at the camp, as he probably would have done if he had gone there to participate in the organization of the rebel force. He never spoke to either Henry or George Ewing about going into the army, as he naturally would have done if he had favored their intentions, being his near neighbors as they were. He never inquired of Ewing about the gun afterward, as he would have been certain to have done had he given it to Ewing with a view of his taking it into the army, and afterward met him at home, and found he had not joined the army as he had expected. Ewing does not swear that Young *gave* him the gun, or even pretended to have any claim to it, and the language used by him does not even imply as much. Had the gun been Young's, and had he intended to give it to Ewing, his language would not have been "take care of it," but, "I make you a present of it," or, "I will give it to you," or, "you may have it," or some equivalent expression; while, if it was his in fact, and he simply desired him "to take care of it," he would naturally have inquired about it afterward when Ewing returned home without going into the army. How, therefore, this testimony can possibly be tortured into evidence that Young owned the gun, that he carried it to Prestonburg, or that he gave it to Ewing, and all for the purpose of aiding the rebellion, is more than the undersigned are able to see. If this amounts to "clear and satisfactory" proof, then it is difficult to perceive what may not be so, especially when it is considered in connection with the testimony of Thomas M. Green, esq., who was a Union candidate in opposition to both the parties to this contest, and



was anxious to fix upon Mr. Young the charge of complicity with the rebellion, and especially in this particular instance. He says:

When Captain McKee met Judge Young, he said nothing about the afflictions of his brother-in-law, nothing concerning Judge Young having been in Prestonburg for six weeks, nothing concerning his having been a candidate for colonel of a rebel regiment, and not one word charging or insinuating that Judge Young had been connected with the rebel army in any shape or form. At Widow Hutches's and at Piketon, Captain McKee was equally silent upon all these points. I was the more forcibly struck with this fact, because on several occasions Captain McKee had asked for extension of time in debate, in order to bring in the matter of the epileptic fits, and because at Prestonburg, at Widow Hutches's, and at Piketon, the only places at which Young and McKee met after I entered the canvass, Judge Young boldly defied and challenged Captain McKee or any one in the district to name one single disloyal act of which he (Young) had been guilty.

I here state upon oath, and with a full sense of the importance of telling the truth, that along the whole route, and more particularly at Prestonburg and at Owingsville, where Judge Young lived, I made diligent inquiry to ascertain if Judge Young had been guilty of any treasonable act. I interrogated those who intended to vote for Captain McKee, Union men who intended to vote for me, and rebel soldiers and rebel sympathizers alike. I was especially careful to question men who had been at Prestonburg at the time alluded to by Captain McKee. I made these inquiries for the purpose of using any information I might gain against Judge Young and for my own benefit. The result of all my investigations was that I could learn of no act on the part of Judge Young which was treasonable in its extent or nature, and to my own disadvantage I was compelled to acquit him, Judge Young, of any such act.

Upon the whole evidence, therefore, the undersigned maintain that it has not been made to appear by anything like "clear and satisfactory testimony" that John D. Young has been guilty of any such open acts of disloyalty that he cannot truthfully take the oath prescribed by the act of July 2, 1862, and that he should be permitted to take his seat as the representative of the ninth congressional district of Kentucky in the present Congress.

The undersigned cannot, however, close this paper, lengthily as it has necessarily been made, without entering a most solemn and emphatic dissent from the doctrine assumed by the majority, that a person possessing the qualifications prescribed in the Constitution of the United States for a member of the House of Representatives can be legally excluded from his seat as such, after having been duly elected thereto, simply because he may not be able truthfully to take the oath prescribed by the act of July 2, 1862. It is more than doubtful in their opinion whether the act can, by any proper rule of construction, be made to apply to members of Congress at all; but, be that as it may, it seems to them to be a violation of the Constitution in more than one particular.

Congress, by an act passed January 24, 1865, extended the provisions of the act of July 2, 1862, so as to require the oath therein prescribed to be taken by lawyers practicing in the courts of the United States. That act was declared by the Supreme Court, upon solemn adjudication, after thorough argument, to be unconstitutional, not only because it was in conflict with the inhibition against the passage of bills of attainder, but because it was to all intents and purposes an *ex post facto* law, besides being in contravention of that clause in the Constitution vesting the pardoning power in the Executive. (*Ex parte Garland*, 4 Wall, page 333.) But there is another and far weightier reason for holding the act of 1862 unconstitutional, when sought to be enforced as to members of Congress, and that is, that it superadds qualifications, or, which amounts to the same thing, prescribes disqualifications for representatives unknown to the Constitution, which, in the very nature of things, Congress has no power to do.

The Constitution, section 2, article 1, provides that "no person shall



be a representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not when elected be an inhabitant of the State in which he shall be chosen," the converse of which is that any person who is twenty-five years of age, has been a citizen of the United States for seven years, and is an inhabitant of the State in which he may be chosen, shall be a representative if legally elected as such. If the person elected possess the qualifications presented by the Constitution, Congress has no power to inquire any further, or to demand anything more.

This principle was early recognized by Congress in the case of *Barney vs. McCreery*, from Maryland, and reaffirmed in the cases of *Fouke vs. Trumbull*, and *Turney vs. Marshall*, from Illinois. In the latter case, the distinguished chairman of the committee at that time, Mr. Bingham, says in his report:

By the Constitution the people have the right to chose as their representative *any person* having only the qualifications therein mentioned, without superadding thereto any additional qualification whatever. A power to add new qualifications is equivalent to a power to vary or change them.

Yet that this act does in effect prescribe an additional qualification is too plain to admit of an argument. It is a self-evident truth. That additional qualification without the possession of which the majority would not permit him to take his seat, is his ability to truthfully take the test oath. If the majority think he can truthfully take it, he gets his seat; if they think otherwise, he is deprived of it. Will any man of ordinary self-respect deny, then, that this act prescribes an additional qualification? If this principle is correct, then there is no limit to the power of Congress in prescribing qualifications for its members but the will and discretion of the dominant majority, and by prescribing test after test they may exclude everybody but a favored few, and the right of choosing their own representatives may be taken from the people entirely, or the character of Congress molded to suit the views and interests of one particular section or party forever.

It is no answer to this to say that Congress should have the power to exclude persons who from imbecility or want of integrity might endanger the safety of the government. The question is, *has* it the power? It has only the power to exclude those who do not possess the qualifications prescribed in the Constitution. If the people see proper to elect an imbecile, a person holding opinions distasteful to the majority, or one who may once have held such opinions, to represent them, it is a matter that concerns themselves, and confers no new power on Congress, and suspends no provisions of the Constitution. The only remedy lies in amending the Constitution, in the manner prescribed in the fifth article. Until that is done, Congress can do no more than pass upon the qualifications already prescribed.

It is simply begging the question to claim that Congress has the power to prescribe this test oath to be taken by its members because "each House has the power to judge of the elections, returns, and qualifications of its own members," for the question instantly recurs, "What are the qualifications of which each house may be the judge?" and the answer is, simply the qualifications prescribed by the Constitution. To admit any other rule would be to make each House entirely independent of the Constitution, as to who may or may not be its own members.

These views seem to the undersigned too obvious to be evaded by any amount of sophistry, however specious or ingenious, and believing that the perpetuity of constitutional liberty demands their enforcement, they have deemed it due not only to themselves but to the American people,



to insist that every person legally and fairly elected as a representative in Congress, who possesses the qualifications prescribed by the Constitution, shall be entitled to his seat as such, independent of any test prescribed by Congress.

In the case under consideration, however, the person elected and claiming the seat insists that he is able truthfully and conscientiously to take the oath prescribed by the act of July 2, 1862, and is willing to do so, and there consequently appears to the undersigned no good reason in any aspect of the case why he should not be permitted to take his seat.

M. C. KERR.  
JOHN W. CHANLER.

---

#### MINORITY REPORT.

June 2, 1868.—Mr. Upson, from the Committee of Elections, submitted the following as the views of the minority:

The undersigned, a member of the Committee of Elections, not being able to concur in the conclusion arrived at either by the majority or the minority of the committee in their reports heretofore submitted to the House in this contested election case of *McKee vs. Young*, (report No. 29 of this session,) submits, by leave of this House, the following report of his views in said case:

The election in this case was held on the 4th day of May, 1867, and the candidates for the office of representative in Congress in this (the ninth) congressional district of Kentucky were John D. Young, Thomas M. Green, and Samuel McKee, the republican or radical candidate being Mr. McKee, and Mr. Young and Mr. Green being the opposition candidates, or rather the candidates of the democratic or conservative party in this State. It appears by the said report of the majority and minority in this case, (report No. 29, pages 11 to 18,) that the majority (or rather plurality) of Mr. Young over Mr. McKee, as officially reported, was 1,479, as claimed and admitted by both parties, the vote cast for Mr. Green being so small as not to require any notice in this contest. It also appears from the said report of the majority, (pages 10, 11, and 12,) that, deducting from this majority the votes cast for Mr. Young at precincts where the election officers were illegally appointed and were not qualified by law to act according to the statutes of Kentucky, including precincts where rebel election officers officiated and one precinct defectively certified, being in all a majority of 1,473 votes over those cast at the same precincts for Mr. McKee, and it leaves, as shown on the face of the report itself, a majority of only five votes for Mr. Young. From the same report (page 12) it is also shown that, to make up this majority of five votes for Mr. Young, eight votes cast by deserters from the federal army are counted by the majority of the committee for Mr. Young, which votes, if rejected, as they should have been, would have given Mr. McKee a majority of three votes on the basis given or statement contained in the majority report, and would entitle him to the seat. But the evidence in this case also shows (page 23, Mis. Doc. No. 13, and certified copy of poll-book) that at Little Sandy (Middle Fork) precinct, in Morgan County, G. G. Adkins, one of the judges of election, had been in the rebel army, and was disqualified to act as such judge by the laws of Kentucky. The majority for Young here, as returned and counted, is 55, and as the election here was clearly illegal, and as



the vote of this precinct was evidently by mistake overlooked by the majority in their report, these 55 votes should be deducted from Mr. Young, making the actual majority for Mr. McKee 58. The vote of Centreville, in Fleming County, where the officers were not legally appointed, is also overlooked by the majority of the committee, and which gave Mr. Young a majority of 132. This also rejected, would make McKee's majority 190. But, in addition to this, it further appears from said report (page 6) that, of the remaining votes counted for Mr. Young by the majority of the committee, in addition to those cast in the precincts rejected, and deducted as above referred to, 666 were cast by returned (and, as will be claimed hereinafter, unpardoned) rebel soldiers, and if these were rejected, Mr. McKee's majority, as above stated, would be increased to 856.

It is also further suggested in said report (page 6) that, while the evidence gives the names of seven hundred and sixty-seven rebel soldiers who voted for Mr. Young, the testimony tends to show that in the aggregate in the district more than two thousand returned and unpardoned rebels cast their votes for him at this election.

It remains to be seen whether under these circumstances and under such a state of facts this House will say that Mr. Young has received a majority or plurality of the votes lawfully cast at said election in this district.

The undersigned, while concurring with the majority in the view which they take of Mr. Young's disloyalty as disqualifying him to take the oath of office, even if he had received a majority vote, nevertheless finds that Mr. Young did not receive a majority or even plurality of the lawful votes polled at said election, and that Mr. McKee is, by the vote of the qualified electors of said district, duly chosen a representative in Congress, and entitled to his seat as such.

The internal condition of Kentucky, as affected by the late rebellion and the participation of many of her citizens therein, is now a matter of history, of which this House will judicially take notice, and her consequent condition even later than the date of this election is also strikingly shown in the report of Major General Thomas, as embodied in the annual report of the Secretary of War, accompanying the last annual message of the President.

When the rebellion virtually terminated by the surrender of Lee, April 9, 1865, by the terms of said surrender the officers were to give their individual paroles not to take up arms against the government of the United States until properly exchanged, and each company or regimental commander signed a like parole for the men of their commands; and each officer and man was allowed to return home, "not to be disturbed by the United States authority as long as they observe their parole and the laws in force where they reside."

The subsequent surrender of Johnston and his army was on the same terms, as is believed was also that of Kirby Smith and all the other rebel forces. Their condition was then that of paroled prisoners of war, and not that of qualified voters, in the several States to which they might return for the election of representatives in Congress.

By the President's proclamation of amnesty of May 29, 1865, he specially excepted from the benefits thereof in class 10th of the exceptions there designated, "all persons who left their homes within the jurisdiction and protection of the United States, and passed beyond the federal military lines into the pretended Confederate States, for the purpose of aiding the rebellion." *Prima facie*, therefore, on the 4th day of May, 1867, all returned rebel soldiers in Kentucky were not only paroled pris-



oners of war, but were also unpardoned rebels, whom the reconstruction acts had not affected, as they did not apply to Kentucky. They had "left their homes within the jurisdiction and protection of the United States, and passed beyond the federal military lines into the pretended Confederate States for the purpose of aiding the rebellion." What effect any proclamation of amnesty issued by the President since the said 4th day of May, 1867, may have had upon the condition of such persons, it is not necessary here to consider, as it cannot affect the merits of this case.

It will hardly be contended that paroled prisoners of war in a State have a right to elect representatives to Congress, or, if they attempt it, that Congress has not the right and power to prevent it.

The act of Congress of March 3, 1865, decitizenizes, by their own voluntary act, all persons who have deserted the military or naval service of the United States who shall not return to said service, or report themselves to a provost marshal, within sixty days after the issuing of the President's proclamation under the provisions of said act, and makes them forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of citizens thereof, and the act of Congress of July 19, 1867, recognizes expressly this loss of citizenship in consequence of desertion.

The statutes of Kentucky also recognize the right of expatriation on the part of the citizen, and that naturalization can only be effected under the laws of the United States, so as to make the naturalized person a citizen of that State, and no person by her constitution can be a voter who is not a citizen. Citizenship of white persons in that State is derived by birth within that or some other State of the Union, or residence therein, or by naturalization under the laws of the United States and the like residence in said State. The few exceptional cases it is not necessary to notice. That deserters, by reason of this act of Congress, are not legal voters, has also been expressly held by the majority of the said committee in the recent case of *Delano vs. Morgan*, from the thirteenth congressional district of Ohio. (Report No. 42 of this session, p. 3.)

We next come to consider the appointment, qualification, powers, and duties of election officers, which in Kentucky consists of two judges of election and one clerk, appointed for each election precinct by the county court of the county, and a sheriff or person acting as sheriff.

By the laws of Kentucky the judges of election are required to superintend the election, determine upon the legality of all the votes, see that they are properly recorded with the voter's name in the poll-book, attend to the proper summing up of the votes, certify the poll-book over their signature, and deliver the same in an envelope, sealed by them before they separate, to the sheriff.

When the judges disagree, the sheriff is to act as umpire between them. The clerk is required in the presence of the judges to sign his name at the foot of every page of the poll-book as the election progresses, so that the same may be thereby identified.

If the office of sheriff is vacant, or if the sheriff is himself a candidate at any election, all his duties pertaining to that election are to be performed by the coroner and such deputies as he (the coroner) may appoint for that purpose. When a person offering to vote is not personally known to one of the judges or sheriff as a qualified voter, he is to be interrogated under oath by one of the judges or the clerk as to his qualifications, and if he appears to be qualified, he is allowed to vote, unless his right is disputed by one of the judges, or sheriff, or some per-



son present. If disputed, the judges are to hear witnesses on each side, and decide as may appear right from the proof and the statements of the party; the law thus requiring the judges, clerk, and sheriff of election all to be personally present and officiating while the election is progressing.

In the case of *Chrisman vs. Anderson*, in the thirty-sixth Congress, from the State of Kentucky, the Committee of Elections says on this point as follows:

The voting is *riva voce*; the name of each voter and of the candidate for whom he votes being publicly cried by the sheriff or his deputy, and recorded by the clerk. (Bartlett's Cont. Elec. Cases, p. 329.)

From the nature of their powers and duties as well as from the condition of Kentucky, consequent upon the rebellion, it will be seen how important it was that these election officers should be impartially selected and appointed as required by law, equally from each of the two political parties, and also that no participant in or adherent of the rebellion should be allowed to be appointed or to act as such election officer, and the law of Kentucky recognizes this importance by imposing a penalty on all officers of that State, having the power to appoint any of such election officers, who fail to observe these requirements. This act, with an amendment thereto, is as follows:

[Myers's Supplement, p. 456.]

AN ACT to amend section 1, article 3, chapter 32, title "Elections," of the Revised Statutes.

*Be it enacted by the general assembly of the Commonwealth of Kentucky*, That hereafter, so long as there are two distinct political parties in this Commonwealth, the sheriff, judges, and clerk of election, in all cases of election by the people under the Constitution and laws of the United States, and under the constitution and laws of Kentucky, shall be so selected and appointed as that one of the judges at each place of voting shall be of one political party, and the other judge of the other or opposing political party; and that a like difference shall exist at each place of voting between the sheriff and clerk of elections: *Provided*, That there shall be a sufficient number of the members of each political party resident in the several precincts, as aforesaid, to fill said offices. And this requirement shall be observed by all officers of this Commonwealth who have the power to appoint any of the aforesaid officers of election, under the penalty of fine of \$100 for each omission, to be recovered by presentment of the grand jury.

MARCH 15, 1862.

AN ACT to amend an act entitled "An act to amend section 1, article 3, chapter 32, title 'Elections,' of the Revised Statutes," approved February 11, 1858.

SECTION 1. That in construing the act approved February 11, 1858, to which this is an amendment, those who have engaged in the rebellion for the overthrow of the government, or who have in any way aided, counseled, or advised the separation of Kentucky from the federal Union by force of arms, or adhered to those engaged in the effort to separate her from the federal Union by force of arms, shall not be deemed one of the political parties in this Commonwealth within the provisions of the act to which this is an amendment.

SEC. 2. This act to take effect from and after its passage.

It is submitted that such statutes cannot be considered as directory merely, but as imperative, and it is insisted also that the condition of this portion of Kentucky, at the time when this election was held, made the rigid enforcement of this law a matter of vital interest to the loyal Union men of that district.

It is stated by the minority of the committee in their report heretofore referred to, (page 16,) that all these election officers must, by the laws of Kentucky, have been appointed in June or July, nearly a year preceding this election, and hence they argue that the vote of these officers cast at this election is no evidence of their political status at the time of their alleged appointment, the year previous, and they quote from the



reasoning of the chairman of the committee in the case of *Blakey vs. Golloday*, (report No. 1, of this session, page 3,) in support of this position.

Unfortunately, however, for their argument, they overlooked the fact that this congressional election was held by virtue of an act of the legislature of Kentucky, passed February 18, 1867, which provided that the officers of election to be appointed by the county courts in March or April of that year, for the election of constables and justices of the peace, should be the officers of election for the election of members of Congress, on the same 4th day of May, 1867, so that the appointment was only made a month or two, at the furthest, prior to the election, and the vote of the election officer would be a pretty sure criterion of his political party status at the time of his appointment, especially as the representative in Congress was the most important officer to be chosen at said election.

But the case of *Blakey vs. Golloday* was expressly decided on other grounds, and no decision was made as to the political construction to be given to this law of Kentucky.

The report itself on this subject uses this explicit language: "But the conclusion to which the committee arrived has rendered unnecessary all speculation as to the true constitution or mode of administering the law which it is claimed has been violated;" which "law" referred to is the very statute, as shown by the contest, which we are considering. But the minority of the committee referred to have also overlooked the important fact that in this case there is other evidence than the poll-books to show the political status of the election officers. There is not a precinct specified in the report of the majority where the poll-books shows the election officers not politically divided as required by law, where there is not other testimony in the case, to show the political status of these election officers in corroboration of the poll-books, though there may be one or two where only one of them is specifically named or identified.

But in addition to this there is the testimony of Mr. Campbell, (page 48, Mis. Doc. 13,) a lawyer residing in Maysville since 1849, tending to show, from his own knowledge of the election, officers appointed for the county of Mason for this election, where most of the said election precincts are situated, that twenty-eight of them out of forty-four were recognized notoriously as friends of the rebellion during the war, seven as conservative Union men, four as uncertain, and only five as belonging to the same political party with Mr. McKee.

Twenty-eight voted for Young, seven for Green, five for McKee, and four did not vote. Thus, in this county alone, it appears that twenty-eight of the election officers were disqualified by reason of disloyalty, while it is further shown by the testimony that the county judge who appointed them was himself a paroled prisoner from Camp Jackson, St. Louis, Missouri, who "always contended that Camp Jackson was not a rebel camp," and whom the witness understood "to be, and to have been from the beginning of the war, a man who desired the success of the rebel armies and the defeat of the Union armies," though he has frequently said "that he was and is a Union man, and that Congress and its adherents are the real disunionists."

By the law of Kentucky he was disqualified to act as an officer of election. How appropriate, then, was it for him to act as county judge and to constitute one of the board to canvass and make return of the votes of the county and issue certificates to those declared elected?



We may well be disposed to scrutinize, if not to question, the official acts of such an officer in reference to this election.

The political predilections of Mr. Thomas M. Green, the third candidate for Congress at this election, and the relation which he sustains to this contest, may be easily inferred from the fact that the poll-book of his precinct at Maysville shows that he voted for John D. Young, and also that in the testimony he appears as an ardent, eloquent, and argumentative witness in his behalf.

The evidence, then, in regard to the precincts specified in the majority report shows, outside of the poll-books, not only the objections there stated, but also proves many of the election officers to have counselled, aided, and abetted, or adhered to the rebellion, so as to disqualify them to act as election officers. It also shows that Coryell, the sheriff at Orangeburg precinct, in addition to his disloyalty, was a candidate for justice of the peace at this election, and was elected.

This was an additional disqualification, and prohibited him from acting as an election officer by the laws of Kentucky.

That elections held and returns made by officers illegally appointed, or not properly qualified, are illegal and should be rejected, it is sufficient to refer to the following precedents:

If the State law requires three magistrates to preside at the election, a return made by three persons, two of whom were not magistrates, was held defective. (*Jackson vs. Wayne*, Cl. & H., 47.)

The neglect of the returning officers to be sworn, where the law requires them to act under oath, vitiates all returns made by them. (*McFarland vs. Culpepper*, Cl. & H., 221.)

If an election is required by law to be held by three judges who are to be sworn, and it is held by two not sworn, the votes taken by them are to be rejected. (*Easton vs. Scott*, Cl. & H., 272.)

The neglect of election officers to take the oath required by law vitiates the polls for the county or precinct in which such officer acts. (*Draper vs. Johnston*, Cl. & H., 702; and see also *Letcher vs. Moore*, Cl. & H., 715.)

Where the law required the board of election officers to consist of three persons and but two officiated, the vote was rejected. (*Howard vs. Cooper*, *Bartlett's Election Cases*, 275.)

Where the poll-book was not certified to by any of the officers of the election, held that the vote should not be counted. (*Chrisman vs. Anderson*, *Bartlett*, 328.) See also a remark of the committee in *Harrison vs. Davis*, (*Bartlett*, 343,) and especially the report of the committee in the case of *Delano vs. Morgan*, of the present session.

In reply to the point made by the minority in regard to the sacred nature of the right of suffrage and the legality of the acts of "*officers de facto*" in such cases, it is sufficient to quote from the minority report made by Mr. A. H. Stephens, in the case of *Bennett vs. Chapman*, May 13, 1856, (*Bartlett*, 212,) which report was sustained by the House. In said report, Mr. Stephens says:

The contestant in this case, in a paper filed with the committee, says that the right of suffrage under our form of government is a great, sound, and paramount right, and not to be lost by the errors, omissions, or neglect of subordinate officials.

The undersigned cannot agree with the contestant in the extent to which he asserts the doctrine in this proposition. The right of suffrage, great and inestimable as it may be, is nevertheless a right regulated and qualified by law; indeed, it can only be properly exercised in conformity to the requirements of law—without these it would soon cease to be valuable. \*

The evidence also shows some violence and intimidation practiced at some of the polls rejected towards Union men there, which it is sufficient here to allude to in this connection.

The following statement shows the majorities returned for Mr. Young in the precincts where the returns are rejected:



## MASON COUNTY.

May's Lick .....	172
Maysville, No. 1.....	131
Germantown.....	86
Maysville, No. 2.....	112
Lewisburg .....	148
Washington .....	69
Minerva .....	65
Orangeburg .....	67

## MORGAN COUNTY.

Ruin .....	73
Caney.....	58
West Liberty .....	77
Little Sandy .....	55

## FLEMING COUNTY.

Elizaville .....	80
Centreville .....	132

## BATH COUNTY.

Sharpsburg.....	109
Mud Lick .....	51

## MONTGOMERY COUNTY.

Camargo .....	132
To these add deserters voting for Young.....	8
Rebels voting for Young .....	666

Total.....	2,291
Deduct Young's majority as returned .....	1,479

McKee's majority .....	812
If to this you add Easterling, as specified in majority report....	44

McKee's majority is .....	856
---------------------------	-----

Under the law and the facts, then, the undersigned submits that Mr. McKee is elected and is entitled to be sworn in and take his seat as a member of this house.

CHARLES UPSON.

## [SECOND REPORT.]

## McKEE vs. YOUNG.

June 17, 1868.—Mr. Cook, from the Committee of Elections, made the following report:

*In the case of Samuel McKee against John D. Young, of the ninth district of Kentucky, which was recommitted to the Committee of Elections, the committee respectfully reports:*

That the committee adheres to the conclusions arrived at, and the reasons stated therefor, in the report submitted on the 23d of March,



A. D. 1868, by Mr. McClurg, so far as the same relate to the right of John D. Young to hold a seat in this House, and recommends the adoption of the resolution then reported, as follows:

*Resolved*, That John D. Young, having voluntarily given aid, countenance, counsel, and encouragement to persons engaged in armed hostility to the United States, is not entitled to take the oath of office as a representative in this House from the ninth congressional district of Kentucky, or to hold a seat therein as such representative.

And in relation to the question whether said John D. Young or Samuel McKee was legally elected to this House, said committee reports as follows:

The election for member of Congress in the ninth district of Kentucky was holden May 4, 1867.

At that election John D. Young received 9,042 votes.

Samuel McKee received 7,563 votes.

Thomas M. Green received 862 votes.

Of the votes so received by said Young, 625 were given by men proven to have been soldiers in the rebel army, which votes were given in election precincts other than those hereinafter specifically named.

The following persons acted as officers of election, who had been soldiers in the rebel army:

Morgan County, West Liberties, John T. Hazelrigg, clerk. (See testimony of Miles W. Nichols, Mis. Doc. 13, p. 19.)

Young's majority in this precinct was 77.

Precinct of Ruin, Rhoda Horton, sheriff; Daniel De Hart, clerk. (See testimony of G. W. Stamper and Frank Hunter, p. 23.)

Young's majority in this precinct was 73.

Caney precinct, H. G. Castle, sheriff. (P. 23.)

Young's majority in this precinct, 58.

Little Sandy, G. G. Atkins, judge. (P. 23.)

Young's majority, 55.

Bath County, Sharpsburg precinct, J. M. Colman, sheriff of election. (P. 43.)

Young's majority in this precinct, 109.

Mud Lick precinct, Robert Wells, sheriff. (P. 39.)

Young's majority in this precinct, 51.

Bethel precinct, R. W. Sharp, sheriff. (P. 42.)

Young's majority in this precinct, 129.

Montgomery County, Camargo precinct, J. A. O'Rear, clerk. (P. 64.)

Young's majority in this precinct, 132.

Centreville precinct, Fleming County, Mason Caywood and William H. Cord, judges of election. Samuel McGuire (p. 96) testifies:

Mason Caywood and William H. Cord have been publicly known as southern sympathizers, and in favor of the so-called southern confederacy, both during and since the war.

Young's majority in this precinct, 132.

Mason County, Orangeburg precinct, W. D. Coryell, sheriff of election.

D. Rice Bullock testifies as follows, page 53:

I know W. D. Coryell to be an out-and-out rebel. I heard him thank God for the destruction of the Union troops at the battle of Bull Run. He never claimed to be anything else but a rebel; he was elected magistrate at the election held May 4, 1867; when he acted as sheriff he accepted said office, and is now acting as justice of the peace of Mason County.

Young's majority in this precinct, 67.

It appears perfectly clear to the committee that persons who had been soldiers in the rebel army had no right to vote or to act as officers of election. They had surrendered to the government of the United States



upon the condition that each company or regimental officer should sign a parole for his men, and each man was allowed to return home, not to be disturbed by United States authority so long as he observed his parole and the laws in force where he resided. These men were especially excepted from the amnesty proclaimed by the President May 29, 1865, under the tenth exception, and there appears to have been no other act of amnesty up to the time of this election which could include them; they were paroled prisoners of war. No reason occurs to the committee why these men should be allowed to vote which would not apply with equal force to them while actually in the field against the government; the only difference which appears is, that they had now been captured; their object, aim, and intent, whether in fighting or voting, was manifestly to destroy the government. It seems absurd to say that it was a patriotic duty to kill them while they were in arms against the government to prevent the destruction of the government by them, and at the same time wholly illegal to refuse to allow them to accomplish the same result by their votes. The whole plan of reconstruction by Congress, as also the plan of reconstruction proposed in the proclamations of the President, has proceeded upon the assumption that those who had renounced their allegiance to the government and fought against it have forfeited their right to vote.

The committee are of the opinion that the 625 votes of rebel soldiers ought not to be counted.

By the law of Kentucky none but electors can be judges or officers of election. The law of Kentucky also provides that those who have engaged in the rebellion for the overthrow of the government, or who have in any way aided, counseled, or advised the separation of Kentucky from the federal Union by force of arms, or adhered to those engaged in the effort to separate her from the federal Union by force of arms, should not be selected as judges of election.

[Myers's Supplement, p. 456.]

AN ACT to amend section 1, article 3, chapter 32, title "Elections," of the Revised Statutes.

*Be it enacted by the general assembly of the Commonwealth of Kentucky,* That hereafter, so long as there are two distinct political parties in this Commonwealth, the sheriff, judges, and clerk of election, in all cases of elections by the people under the Constitution and laws of the United States, and under the constitution and laws of Kentucky, shall be so selected and appointed as that one of the judges at each place of voting shall be of one political party, and the other judge of the other or opposing political party; and that a like difference shall exist at each place of voting between the sheriff and clerk of election: *Provided,* That there be a sufficient number of the members of each political party resident in the several precincts, as aforesaid, to fill said offices. And this requirement shall be observed by all officers of this Commonwealth who have the power to appoint any of the aforesaid officers of election, under the penalty of a fine of one hundred dollars for each omission, to be recovered by presentment of the grand jury.

MARCH 15, 1862.

AN ACT to amend an act entitled "An act to amend section 1, article 3, chapter 32, title 'Elections,' of the Revised Statutes," approved February 11, 1858.

SECTION 1. That in construing the act approved February 11, 1858, to which this is an amendment, those who have engaged in the rebellion for the overthrow of the government, or who have in any way aided, counseled, or advised the separation of Kentucky from the federal Union by force of arms, or adhered to those engaged in the effort to separate her from the federal Union by force of arms, shall not be deemed one of the political parties in this Commonwealth within the provisions of the act to which this is an amendment.

SEC. 2. This act to take effect from and after its passage.

It has long been held that if the officers of election are not capable of



holding the office, the election has no more validity than would an election where no officers whatever were appointed; it is otherwise where persons capable of holding the office are appointed, although they may not have complied with the forms of the law. (*Easton vs. Scott*, First Contested Election Cases, page 272; *Delano vs. Morgan*, decided the present session.)

The total majority for Young given in these precincts, as shown by the rebel officers of election, is 883.

It is proven that eight deserters voted for Young, not included in the above lists.

	Votes.
Making a total of .....	1, 516
Deduct Young's official majority .....	1, 479
Legal majority for McKee .....	41

The evidence shows conclusively that in many parts of this district at the time of the election legal voters were prevented from voting by threats and intimidation; many witnesses testified that they wholly abstained from voting lest they should endanger their personal safety, and the proof shows these fears to have been reasonable. The fact that so large a number of rebel soldiers voted and so large a number of rebels acted as officers of election, is evidence strongly tending to corroborate the truth of this statement, although no testimony whatever has been taken in relation to the voting of rebels in some of the most disloyal portions of the district, the contestant alleging that the officers there would not allow him to take testimony before them.

These facts are alluded to not as forming any element in the count of votes, but as showing the necessity for the strict construction of and adherence to the law governing elections if the rights of loyal men are to be protected.

The committee recommends the following resolutions for adoption:

*Resolved*, That J. D. Young was not legally elected a member of the House of Representatives of the fortieth Congress from the ninth congressional district of Kentucky.

*Resolved*, That Samuel McKee was duly elected a member of the House of Representatives in the fortieth Congress from the ninth congressional district of the State of Kentucky.

#### R. R. BUTLER.

A joint resolution relieving Butler from disabilities was passed.

February 25, 1868.—Mr. Dawes, from the Committee of Elections, made the following report:

*The Committee of Elections, to which were referred the credentials of Roderick R. Butler, claiming to be a representative from the first congressional district in Tennessee, and the memorial of Joseph Powell, a citizen of said district, preferring charges against the loyalty of said Butler, has considered the same, and submits the following report:*

The entire evidence in this case, submitted to the committee, has been printed by order of the House, and may be found in Mis. Doc. No. 28 of the present session, from which it appears that Mr. Butler was duly elected, in conformity with the laws of Tennessee, such representative,



at the regular election held in said State for the election of representatives to Congress, on the first Thursday of August, A. D. 1867. The vote, as returned, stood as follows:

For Mr. Butler .....	11, 972
For J. White .....	1, 777
For J. Powell .....	44

No other objection is raised to the admission of Mr. Butler except that of disloyalty. From the evidence it appears that Tennessee took the various steps by which it was claimed that the State had seceded from the Union, and allied itself with the southern confederacy, before the 6th day of May, 1861; that while his State was occupying this hostile attitude to the United States, and its authorities were making war upon the Union, Mr. Butler was elected, on the first Thursday of August, 1861, a member of the legislature of the State, as a representative from the counties of Johnson and Carter, and on the 7th day of October was qualified as such representative by taking the oath of office, including an oath to support the southern confederacy. He thereupon entered upon the duties of such representative, and served in the regular session of that legislature following the day of his taking the oath at Nashville till the March following, when the legislature was driven from the capital of the State by the Union forces, and subsequently, for a short time, in May following, at Memphis, where it had been convened under the proclamation of Governor Harris. During the time of his service in this legislature the course of Mr. Butler was not uniform. Sometimes he gave his vote for measures calculated to aid the confederacy, and sometimes against them. Sometimes he voted for, and afterward changed his vote against, measures calculated to give aid and comfort to the rebellion. The attention of the committee was called to his vote, December 14, 1861, in favor of the following resolutions, and to his change of that vote to the negative on the 19th of March, 1862:

SATURDAY MORNING, December 14, 1861.

Senate resolution No. 59, on the subject of a reconstruction of the government of the United States, was taken up, and Mr. Jones offered the following resolutions in lieu:

*Resolved*, That it is the sense of this general assembly that the separation of those States now forming the Confederate States of America from the United States is, and ought to be, final, perpetual, and irrevocable; and that Tennessee will under no circumstances entertain any proposition, from any quarter, which may have for its object a restoration or reconstruction of the late Union on any terms or conditions whatever.

*Resolved*, That the war which the United States are waging against the Confederate States should be resisted with the utmost vigor and energy, and until our independence and nationality are unconditionally acknowledged by the United States.

*Resolved*, That Tennessee pledges herself to herself and to her sister States of the confederacy that she will stand by them throughout the struggle; that she will contribute all the means which her resources will supply, so far as may be necessary, to the support of the common cause; and will not consent to lay down arms until peace is established on the basis of the foregoing resolutions.

These facts are not denied by Mr. Butler; but, in reply, he claimed that, in point of fact, and upon the proof submitted, during all this period, and ever since, he has been an ardent, self-sacrificing, and active supporter of the cause of the Union, doing all in his power, and in every way open to him, to advance the Union cause, and shelter and relieve those who suffered or were imprisoned for its sake.

The committee finds the following facts:

Mr. Butler was elected to the first legislature held in Tennessee under the confederate government by the Union men of the counties of Carter and Johnson at their earnest solicitation and against his own wishes; for the purpose, and under the impression, that he might thereby render



the Union men of those counties valuable assistance in that position, and shelter them from persecutions which would otherwise be visited upon their defenseless heads. The circumstances under which this election took place, and the motives prompting the electors in their choice, and him in the acceptance, are best shown in the language of one of the witnesses, believed to be truthful and intelligent and earnestly patriotic. John Shupe testifies, page 39, upon this point as follows:

Said R. R. Butler was elected to the legislature of Tennessee by the Union men of Carter and Johnson Counties, and the Union men insisted on said Butler attending the said legislature; and it was generally thought by the citizens of Johnson County that he could be of more benefit to the Union citizens of said county by attending said legislature than if he had remained at home; and that said Butler, in different conversations, always expressed himself unwilling to go to the legislature, saying that if he did go he would have to vote for measures that would seemingly favor the rebellion; and, further, the Union men of this county always told said Butler to go and do what he thought would be best for the Union men of this county, and, vote as he would, that they knew him to be a sound Union man and were not afraid to trust him anywhere, and insisted on his attending the legislature and reporting to them and keeping them posted on the movements and transactions of said legislature; and, further, to my positive knowledge, said Butler did so post the Union citizens of said county and furnish them with valuable information; and, by so doing, was of great benefit to the Union element of said county while in said legislature.

There was very much and very satisfactory evidence to the same effect from witnesses who knew well Mr. Butler and the counties he represented, including private letters from him, written at the time and during his service in the legislature, showing the motives prompting his action while there, and revealing many things done and many devices resorted to, that the Union cause might be advanced and those suffering for its sake relieved. It was also shown to the committee that to the personal efforts of Mr. Butler, as much, if not more, than to those of any other man, was owing the strong Union sentiment which always dominated in the county of his residence, resulting in the furnishing of more Union soldiers from that county than there were voters in it. The following is but a part of the testimony to the same point, pages 37 and 38:

A. Said Butler did more in this (Johnson) county to make the citizens loyal to the United States government, and used more energies to keep them loyal to said government, than any other one man in said county, and to keep them united in defense of the Union cause; and that he was hated by the rebels, and watched closer by them than any other person in said county of Johnson.

A. The rebels always said that if said Butler had taken the rebel side in the late war, that this (Johnson) county would have been rebel, and that if he and Colonel Smith had been killed, the county would have become rebel. Said Butler was arrested by the rebel soldiery and carried away from his home, and was compelled to make his escape through the lines to save his life; and if he had not made his escape when he did the rebels would have killed him, and so stated on the night he escaped from his home to go through the lines.

A. Johnson County, Tennessee, where said Butler resides, is considered one of the most loyal counties of the State of Tennessee to the United States government, and it is attributed, in a great degree, to the bold and firm stand of said Butler for the Union cause; and said Butler traversed the said county of Johnson, speaking in defense of the Union cause in almost every district of said county, and urging the people generally to stand firm to the Union cause.

After Mr. Butler's return from the legislature he went actively into the Union cause, accepted a commission in the Union army, and in every position and on every occasion was outspoken and self-sacrificing in his devotion to the cause. He was arrested by the rebels of his county and taken to Knoxville to be tried for treason to the confederacy, and was with great difficulty released. His property was plundered, and he and his family suffered many hardships at the hands of the rebels. One witness testified, page 48:

I never heard said R. R. Butler utter a disloyal sentiment. Said Butler did more for



the Union cause than any man in the county. The rebels did carry away said Butler's property on many occasions, and cursed said Butler for a damned Lincolnite, and said they intended to destroy all the property he had left. They took every horse he had, even to a small colt; killed his hogs out of the pen, drove his sheep to camps and killed them, and swore they would kill him if they caught him; and caught his second son, pulled his hat and boots off him, and the boys had to conceal themselves in the woods until they could go through the lines.

I never heard R. R. Butler's loyalty to the United States doubted by any one during the war; he, the said Butler, was always regarded by all the people of the county as the leader of the Union party. The rebels were harder on said Butler than any other Union man of the county, stating as a reason for doing so that if said Butler was out of the way that Johnson County would become rebel, and that so long as said Butler was permitted to stay in the county it would remain Union.

The evidence is very full on these points, and leaves no doubt on the mind of the committee of the sincere loyalty of Mr. Butler, and that the several acts and votes in the legislature laid to his charge as evidence of his disloyalty are capable of the explanation here given.

But the oath of office which the law requires Mr. Butler to take before he can be admitted to a seat as a representative is in the following words:

I, A. B., do solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted, nor attempted to exercise, the functions of any office whatever under any authority or pretended authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

It will be observed that he is required to make oath that he has "neither sought nor accepted, nor attempted to exercise, the functions of any office whatever under any authority or pretended authority in hostility to the United States." In the opinion of the committee he cannot truthfully so swear. Whatever may have been his motives, the fact still stares him in the face that he took and accepted the office which he will be compelled to swear that he has not taken and accepted. But, for the reasons heretofore given, the committee recommends that, by a joint resolution, so much of the oath as thus stands in the way of admission to a seat in this House of one truly loyal throughout the war may be omitted in administering the oath of office to Mr. Butler.

It accordingly recommends the passage of the accompanying joint resolution.

---

### J. H. CHRISTY AND JOHN A. WIMPY.

Disloyalty a bar to holding a seat in the House. The minority candidate, though loyal, cannot take the seat, though the majority candidate is proved disloyal. The case was not reached in the House.

January 15, 1869.—Mr. Dawes, from the Committee of Elections, made the following report:

*The Committee of Elections, to which were referred the credentials of John H. Christy and of John A. Wimpy, each claiming to be duly elected a representative in this Congress from the sixth congressional district of Georgia, having had the same under consideration, submits the following report:*

That it has heard the parties in support of their respective claims,



and accompanying this report are the credentials of each. Both claim to have been elected, at the election held on the 20th of April, 1868, and the four succeeding days, under what is known as the military government of Georgia. The commission of Mr. Christy is signed by General Meade, then in command of the district, and under whose order the election was held, and bears date July 1, 1868. That of Mr. Wimpy is signed by Governor Bullock, who was at the same election chosen governor of the State, and assumed the duties of that office on the subsequent relinquishment of command by General Meade, and bears date November 24, 1868. There was no evidence submitted to the committee of the number of votes cast at this election in this district for representative in Congress; but it was agreed by both claimants that Mr. Christy received a majority of about 100 votes, and this report is based on that assumed fact.

It was admitted by Mr. Christy, who received a majority of the votes, that he had, during the rebellion, as editor of a paper in the district, supported the cause of the confederacy, and had given "aid, countenance, counsel, and encouragement to persons engaged in armed hostility" to the government of the United States; although it was claimed by him that up to the time that Georgia assumed to secede he had opposed secession, and only went into rebellion with his State. It was also charged upon him by Mr. Wimpy that he had previously to the rebellion held an office under the government of the United States, that of assistant marshal for taking the census, and had, as such officer, taken an oath to support the Constitution of the United States, becoming thereby ineligible under the fourteenth article of amendment. Mr. Christy admitted the holding of the office, but denied the taking of the oath of office, and further claimed exemption from the fourteenth article of amendment because the same was not a part of the Constitution at the time of the election in April last.

The committee was of opinion that, upon his own admission that he had given "aid, countenance, counsel, and encouragement to persons engaged in armed hostility" to the government of the United States, Mr. Christy, in accordance with the precedent adopted by the House in the case of John Yancy Brown, is not qualified to hold a seat as a representative from the State of Georgia, without passing upon the question of ineligibility under the fourteenth article of amendment.

### JOHN A. WIMPY.

The claim of Mr. Wimpy to the seat, while admitting that he did not receive a majority of the votes, is thus set out in his credentials, signed by Governor Bullock:

Whereas the returns, made agreeably to said ordinance, show that John H. Christy received the highest number of votes for representative from the sixth congressional district of this State; and whereas I am satisfied from the evidence in my possession that the said Christy is, under the fourteenth amendment to the Constitution of the United States, ineligible to office; and whereas section 121 of the code of Georgia declares that if at any popular election to fill any office the person elected is ineligible, the person receiving the next highest number of votes, who is eligible, whenever a plurality elects, shall be declared elected, and be qualified and commissioned to such office; and whereas you, the said John A. Wimpy, have received the next highest number of votes in said sixth congressional district in said election and are not ineligible,  
\* \* \* these are to commission you, &c.

Although the committee is of opinion that Mr. Christy is ineligible, not by force of the fourteenth amendment of the Constitution but for other reasons already and sufficiently set forth, still the claim of Mr. Wimpy is of such a nature, based upon a statute of Georgia, that it



becomes necessary to determine whether by force of that statute he is entitled to the seat that Mr. Christy is unable to hold, because of ineligibility by reason of giving aid and comfort to those engaged in armed hostility to the Union. The statute cited by the governor in the certificate given to Mr. Wimpy gives the benefit of its provision only to a person "*who is eligible.*"

Now, it appeared before the committee, upon the admission of Mr. Wimpy, that he had served in the army of the rebellion for about eighteen months, being elected to and serving in the office of ensign during a portion of that period.

It is due to Mr. Wimpy to state that he claimed to have been forced to this course by public opinion in his neighborhood, and that he claimed to have always been a Union man. Nevertheless, the committee was of opinion that at the time of this election Mr. Wimpy, like Mr. Christy, could not take the oath of office because he had "voluntarily given aid, countenance, counsel, and encouragement to persons engaged in armed hostility to the government of the United States." If, therefore, the provision in the statute of Georgia included members of Congress and also this cause of ineligibility, still Mr. Wimpy could not avail himself of it because of his own ineligibility at the time of the election. Nor would a subsequent removal of disabilities by act of Congress give Mr. Wimpy the benefit of this act, because the act refers to the eligibility at the time of the election; and if such an act could bring Mr. Wimpy within its provisions, such an act could likewise take Mr. Christy out of its provisions, and upon its passage he would, with a majority of the votes, be instantly entitled to the seat.

This conclusion, arrived at unanimously by the committee, renders it unnecessary to determine other questions raised in this case which would otherwise render it at least very doubtful whether, under any circumstances, Mr. Wimpy, with a majority of 100 votes against him, could, by force of the law of Georgia already cited, become entitled to the seat. The committee, therefore, does not find it necessary to express an opinion whether the statute was intended to affect other than State officers, or could, if intended, include representatives in Congress, or whether aiding the late rebellion was one of the causes of ineligibility embraced in the "foregoing rules" specified in the one hundred and twenty-sixth section of the act which was itself enacted long before the rebellion broke out; but, for the reasons already specified, reports adversely on the claim of Mr. Wimpy to the seat. It therefore recommends the adoption of the accompanying resolutions:

*Resolved*, That J. H. Christy, having voluntarily given aid, countenance, counsel, and encouragement to persons engaged in armed hostility to the United States, is not entitled to take the oath of office as a representative in this House from the sixth congressional district of Georgia, or to hold a seat therein as such representative.

*Resolved*, That John A. Wimpy, not having received a majority of the votes cast for representative in this House from the sixth congressional district of Georgia, is not entitled to a seat therein as such representative.

*Resolved*, That the Committee of Elections be discharged from the further consideration of the question of removing political disabilities from John H. Christy, and that the same be referred to the Committee on reconstruction.



## J. FRANCISCO CHAVES vs. CHARLES P. CLEVER.

Allegations of wholesale fraud. The report was unanimous, and was adopted by the House, *nem. con.*, February 20, 1869.

February 9, 1869.—Mr. Pettis, from the Committee of Elections, made the following report:

The contest in this case comes here from the Territory of New Mexico, both parties claiming a seat in the fortieth Congress by virtue of an election held in that Territory upon the first Monday of September, 1867.

The contestant spreads upon the record twenty-two grounds of contest, although some of them were not pressed upon the hearing before the committee, no evidence having been taken in support of them.

The sitting delegate makes the denial of every allegation that he deemed material in the list of the contestant's specifications, and in turn alleges that a large number of illegal votes were cast for the contestant at the said election in September, 1867.

The committee has heard the parties in support of their respective claims and submits the following report:

It is admitted that no other candidate was voted for by the people in connection with this office, and that the total vote as returned to the secretary of the Territory was 17,606, of which the sitting member claimed to have received a majority of 540, and upon the strength of that fact received from the governor of New Mexico a certificate of election, upon which he was admitted to a seat in this House.

The contestant alleges that, notwithstanding such return, certificate, and admission, he received the highest number of the legal votes cast for such office, and thereby became, and still is, entitled to a seat in the House of Representatives of the present Congress; and among other things charges—

That at the said election in the county of Rio Arriba, in precinct No. 16, commonly called Tierra Amarilla, only 68 votes were cast for the sitting member, and that none other was found or counted by the judges of the election after the polls were finally closed; but that after the said counting, and before the probate judge sent an abstract, with the poll-books of the said county, to the secretary of the Territory, a poll-book was falsely and fraudulently prepared, by which it was made to appear that the sitting delegate received 452 votes, and that the said fraudulent excess of 384 votes was allowed the sitting delegate in the count, that gave him a majority of 540 votes in the Territory at such election, and that they should now be withdrawn.

The committee is of opinion, from the testimony of Miera\* and Salazar,† that the allegation of the contestant in this respect is sustained by the evidence in the case, and that 384 votes, erroneously allowed to the sitting member in the returns from precinct No. 16, formerly called Tierra Amarilla, in the county of Rio Arriba, should be deducted from the return made to, and accepted by, the territorial officials.

It was also charged by the contestant that in precinct No. 12, commonly called Santa Clara, in the county of Mora, the sitting member received 56 votes, only a majority of 37 over him, the contestant, and yet that the poll-books were falsely and fraudulently made to appear that the sitting delegate received 190 votes, and the contestant 19, and that such excess, which was 134 votes, was fraudulently counted and allowed to the said sitting delegate.

\* Mis. Doc. No. 154, pages 30 and 31.

† Mis. Doc. No. 154, pages 77 to 81.



The committee is of opinion, from the positive testimony of José Angel Padilla,\* and the appearance of the poll-book itself, which was in evidence before the committee for inspection, and the fact that the vote in the precinct in September, 1867, was over five times as large as the election preceding, and twice as large as the one succeeding, that at least 134 illegal votes were cast in such precinct called Santa Clara, in the county of Mora, and, having been allowed to sitting member, should be deducted from the vote credited to him in the return made to, and allowed by, the secretary of the Territory.

It was also charged by the contestant that in precinct No. 11, known as La Junta precinct, in Mora County, the place of voting was illegally and fraudulently placed beyond the settlements and resident voters of the precincts, and held in a shed erected for that purpose upon an open plain, and that persons who were desirous of voting for him were grossly and violently assailed by the friends of the sitting member, and by such means were intimidated and entirely prevented from voting, and that after the polls were closed the returns were so changed as to fraudulently increase the vote of the sitting delegate 100, and that the great majority of persons who voted at such poll were camp followers, and had no legal right to vote under the laws of the Territory.

The committee is unable to find any good reason for the fixing of a place so unusual as was the one in this instance for the holding of an election, and does believe from the evidence that coarse, improper, vulgar, and threatening language was used by the friends and followers of the sitting member, and evidently for the purpose of intimidating and preventing persons from voting for the contestant; yet the committee cannot for such reasons recommend the throwing out of the whole vote of such precinct. Yet, from the testimony of Walter Fosdyke, the appearance of the poll-book itself, they are of opinion that the poll-book was fraudulently altered and changed after the polls were closed, and before it passed into the possession of the secretary of the Territory, so as to increase the vote certified by the judges and clerks of the election, (Mr. Fosdyke being one,†) in favor of the sitting delegate, from 538 to 638, and that the same having been wrongfully allowed the sitting delegate by the secretary of the Territory, should now be deducted.

It was also charged by the contestant that pretended election returns were forwarded to the secretary of the Territory from what was called the thirteenth, or Moreno, precinct, in the county of Mora, which precinct was unknown to the statutes of the Territory, and that in and by such returns the contestant was allowed 17 votes, and the sitting member 60 votes.

The committee is of opinion, from the testimony of Vicente Romero,‡ the probate judge of the county of Mora, that said alleged or pretended precinct No. 13, or Moreno, in Mora County, had no legal existence at the time of the said election on the 1st Monday of September, 1867, and from the testimony of the secretary of the Territory, H. H. Heath,§ that such a precinct was created by the legislature of the Territory in January, 1868, and is therefore of the opinion that the said 17 votes, by such return allowed the contestant, should be withdrawn, and the 60 votes allowed the sitting delegate be also deducted from the vote of said sitting delegate, both having been cast and returned without authority.

The contestant also charged that in the county of Socorro a pretended election was held in what in the returns were denominated numbers 13

\* Mis. Doc. No. 154, pages 104 and 105.

† Mis. Doc. No. 154, page 98.

‡ Mis. Doc. No. 154, pages 62 and 63.

§ Mis. Doc. No. 154, page 82.



and 14; the first being described as the Rio Bonito, and the last as El Valle de Missouri; that in the first of which (the 13th or Rio Bonito) 145 votes were returned and allowed to the sitting delegate, and 37 votes for the contestant; and in the second (which was the 14th or El Valle de Missouri) 25 votes were returned and allowed to the sitting delegate, and 18 votes for the contestant; all of which it was claimed by contestant were illegal and void for the reason above given.

The committee is satisfied, from the testimony of the secretary of the Territory and the statutes of the Territory, that at the time of the election in September, 1867, the said alleged precincts, numbers 13 and 14, in Socorro County, claimed as Rio Bonito and El Valle de Missouri, had no legal existence, but were created by the territorial legislature of 1868,\* and is consequently of the opinion that the votes returned and allowed to both the contestant and the sitting delegate should be thrown out, which will deduct and withdraw from the sitting delegate 168 votes, and from the contestant 55 votes.

It was also charged by the contestant that the returns from the several precincts in the county of Doña Ana were in most cases arbitrarily and illegally changed to such an extent as to alter the result from the return of the judges of the various precincts, which gave a majority for the contestant of 169 votes to a majority of 144 votes for Clever.

The committee is of opinion, from the testimony of J. F. Bennett, who acted as a clerk for the probate judge and justice of the peace at the county seat of Doña Ana, upon the sixth day after the election, upon the first Monday of September, 1867, that the action of the said probate judge and those acting with him was unauthorized and void, and that the 393 votes that were thus arbitrarily and illegally deducted from the lawful return in favor of the contestant should be restored to him and allowed, as well as the 80 votes in the same manner withdrawn from the vote returned in favor of the sitting delegate.

It was also charged by the contestant that the poll-books and abstract of the probate judge of Mora County were not by him sent to the said secretary of the Territory by a special messenger, as required by law, but came to the hands of William H. Moore, acting sutler within the military reservation and post of Fort Union, and were then indorsed to Robert B. Mitchell, the governor of said Territory, and marked value \$5,000, and put in the charge of the civil express company carrying the mails, and by said express conveyed to Governor Mitchell, who produced the poll-books and abstract to the secretary of said Territory.

The committee finds, upon reference to the territorial law, a plain provision requiring the probate judge of each county to forward to the secretary of the Territory, by special messenger, a true extract of the votes cast in their respective counties, together with a poll-book of each precinct, and from the testimony of Vicente Romero and Henry V. Harris that the law of the Territory in this respect was disregarded, which, to say the least, is censurable so far as the conduct of the officers in that behalf is concerned, since there is much force in the argument of contestant's counsel in favor of throwing out the entire vote of Mora County for the reason that a plain provision of the law was violated in the transmission of the returns from that county, and especially when considered in connection with the evidence that seems to point toward the presumption that the returns, as forwarded, were tampered with upon the way, and the additional fact in evidence that in two districts or precincts in said county the vote of 1867 amounted to 948, although in 1866 the same precincts were in one and polled but 337 votes.

---

\* Mis. Doc. No. 154, page 83.



Below will be found the result of the foregoing conclusions of your committee:

Chaves's vote as counted by secretary .....	8,533	
Deduct illegal votes given to Chaves in Moreno, Mora County .....	17	
Deduct those credited to him in Rio Bonito, unauthorized, and in El Valle de Missouri.	55	
	<hr/> 72	
		8,461
Add those improperly rejected in Doña Ana County....		393
		<hr/> 8,854
Clever's vote as shown by secretary .....	9,073	
Deduct for sixteenth precinct, Rio Arriba County .....	384	
Deduct for precinct twelve, in Mora County.	134	
Deduct in eleventh precinct, Mora County.	100	
Deduct illegal, thirteenth precinct, in Mora County .....	60	
Deduct thirteenth and fourteenth precincts, Socorro County .....	168	
	<hr/> 846	
		8,227
Add for rejection in Doña Ana County .....		80
		<hr/> 8,307
		<hr/> <hr/> 547

Besides the general denial upon the part of the sitting delegate, 37 charges and specifications are set out by him in his answer in reply to the contestant.

Your committee finds that the only precincts now insisted upon by the sitting member as being sufficiently irregular and illegal to justify their rejection are the Bernalillo precinct and Chilili precinct No. 10, in the county of Bernalillo, precinct No. 7, in San Miguel County, and that alien votes were given to the contestant in Santa Fé County to the number of 82, and that the sitting delegate is entitled to his 28 of a majority that he claims were not counted, as the same were thrown out for the reason that there was a disturbance at the polls upon the day of election that invalidated the same, being at precinct No. 5, and known as Barelás, in the county of Bernalillo.

Your committee is of opinion, and so reports, that an irregularity existed in this, that when the polls were closed in Bernalillo precinct, in Bernalillo County, the majority was declared for the contestant from an addition of the poll-books without counting the votes in the ballot-box; and that, although there is no evidence that the return was either incorrect or fraudulent, it recommends that such majority of 139 of majority be withdrawn from the contestant's vote as returned to the secretary of the Territory.

Your committee also reports that the return from Chilili precinct No. 10, in the county of Bernalillo, and where the contestant received a majority of 19, was allowed to the contestant although the poll-books were not authenticated by a proper certificate required by law, and therefore recommends that the same be deducted from the contestant's vote.

Your committee is of the opinion, and so reports, that no testimony has been offered before the committee in support of the allegation made



by the sitting member touching the alleged illegality of the 77 votes in precinct No. 7, known as Los Alamos, and the claim in that respect is not allowed.

Your committee is of opinion that the evidence upon the part of the sitting delegate is insufficient in support of his allegation with reference to the 82 votes claimed to have been cast by aliens in the county of Santa Fé, and the same is not allowed.

Your committee is of opinion that the secretary of the Territory was warranted in omitting the sitting delegate's majority of 28 in his count upon which certificate was issued, touching the vote in precinct No. 5, and known as Barelás, in the county of Bernalillo, although the committee believes that it is probable that the sitting member received in said precinct a majority of 28 votes, but which must not be allowed now for the reason that your committee give for disallowing the contestant his majority claimed in Bernalillo precinct, No. 1, in the county of Bernalillo.

Recapitulation of vote heretofore made by committee as corrected in accordance with its report:

Chaves, the contestant's vote.....	8,854	
Clever, the sitting delegate's vote .....	8,307	
	<hr/>	547
Deduct majority given to contestant in Bernalillo precinct, Bernalillo County .....	139	
Deduct majority given to contestant in Chilili precinct, No. 10, in Bernalillo County.....	19	
	<hr/>	158
		<hr/>
		389
		<hr/>

Your committee therefore offers the following resolutions:

*Resolved*, That Hon. Charles P. Clever is not entitled to a seat in the fortieth Congress as a delegate of the Territory of New Mexico.

*Resolved* That Hon. J. Francisco Chaves is entitled to a seat in the fortieth Congress as a delegate from the Territory of New Mexico.

---

## SIMON JONES vs. JAMES MANN, AND CALEB S. HUNT vs. J. WILLIS MENARD.

Several allegations of fraud and intimidation.

Ex parte testimony not admissible.

A minority candidate cannot be admitted to a seat.

The State was redistricted subsequent to the regular election, and the election for the vacancy was substantially a new district. Held that it was not valid.

Mr. Jones's claim was rejected; Mr Menard's claim was also rejected, 130 to 57; Mr. Hunt's claim was also rejected, 131 to 41; when the whole subject was tabled February 27, 1869.

February 17, 1869.—Mr. Upson, from the Committee of Elections, made the following report.

*The Committee of Elections, to which were referred the petition and papers on behalf of Simon Jones, claiming to have been elected a representative in the present Congress from the second congressional district of Louisiana,*



*and contesting the right of James Mann to his seat in this House as such representative from said district; and also the credentials of J. Willis Menard, and the protest and papers of Caleb S. Hunt, each claiming to have been elected a representative in Congress from said district to fill the vacancy claimed to have been caused by the death of said James Mann, submits the following report:*

The said James Mann, it appears, was qualified and took his seat in this House with the rest of his colleagues from the State of Louisiana, on the 18th day of July, A. D. 1868, and is understood to have died on or about the 26th day of August last, although the evidence does not show at what time his death occurred. As the contest between Mr. Jones and him was then pending, that has first to be considered and determined, as, if Mr. Jones was elected, he is entitled to the seat, and no vacancy has occurred by Mr. Mann's death, and the subsequent election was of no validity.

The grounds of contest, as stated by Mr. Jones in his notice, are as follows, (Mis. Doc. No. 13, 2d session 40th Congress:)

To Colonel JAMES MANN:

You are hereby notified that I intend to contest your election to a seat in the fortieth Congress of the United States from the second congressional district of Louisiana, election held in said district on the 17th and 18th of April last, upon the following grounds, to wit:

1st. At the first and second polls of the First ward in the city of New Orleans a large number of votes was received, who voted for you, to wit, more than two hundred, were not legal and qualified voters:

2d. More than two hundred legal and qualified voters presented themselves at said polls, duly entitled to vote at said polls, and who would have voted for me, but were rejected by the commissioners of election at said polls without any authority of law to do so; and said voters were, by the fraud, intimidation, and threats of persons in your interest and opposed to reconstruction, driven away from said polls, and deprived of the right and opportunity of voting for me.

3d. In the first and second precincts in the Second ward in said city of New Orleans, in the said congressional district, a large number of persons, to wit, more than three hundred, was permitted to vote for you at said polls who had no legal right to vote at said polls; and more than two hundred persons legally entitled to vote at said polls, and who intended and did offer to vote for me, were refused the right of voting by the commissioners of election at said polls, and that voters, by frauds and the intimidation used toward said voters by persons in your interest, were driven away from said polls and deprived of the right of voting for me.

4th. At precincts Nos. 5, 6, and 7, at the different places of voting in the Third ward in said congressional district, a large number of persons not entitled to vote in said ward, to wit, more than five hundred, voted for you; and a large number, more than three hundred persons, legal and qualified voters in said ward, who presented themselves at the different polls to vote, and would have voted for me, but upon frivolous and fraudulent grounds the said votes were rejected by the commissioners of election, and said persons were deprived of their suffrage.

5th. At the different polls in the Tenth ward in the city of New Orleans, in said congressional district, a large number, at least three hundred persons, not legal and qualified voters, was permitted to vote for you at said election; and more than two hundred persons, legally registered and qualified to vote in said ward at the different polls, and who would and did offer to vote for me, were rejected and refused the right of voting by the commissioners of election at said polls in said ward, and I was, by their unwarranted and illegal acts, deprived of the votes of said persons.

6th. Frauds were committed at nearly all the polls at said election, by the commissioners of election, and other persons in your interest, whereby I was deprived of more than 1,500 votes. That many of the ballots cast for me at said election were changed after they had been received, and tickets or ballots with your name on were substituted in their stead.

7th. I shall insist and prove, at the proper time, that you are ineligible to the office to which you claim to be elected, because you are not a legal voter or inhabitant in this State; that your legal residence and domicile is in the State of Maine, where you voted at the last election, and where your family resides.

SIMON JONES.



UNITED STATES MARSHAL'S OFFICE, DISTRICT OF LOUISIANA,  
New Orleans, Louisiana, May 22, 1868.

I certify that I this day served a duplicate copy of this paper upon James Mann in person.

J. R. WEST, *Deputy Marshal.*

These allegations of contestant were all specifically denied by Mr. Mann in his answer, and other charges and allegations set up by him in his defense, which, by reason of the view taken by the committee of the evidence submitted by the contestant, it is unnecessary to notice further. No exceptions were taken or objections raised by either party to the sufficiency of the charges or specifications, in either the notice or the answer.

The only official evidence or return before the committee of the vote cast in this district at said congressional election, which was held under the laws of Congress known as the "reconstruction acts," on the 17th and 18th days of April, 1868, is contained in the following communication from the Secretary of War, (Mis. Doc. No. 13, part 3d, page 3:)

WAR DEPARTMENT, *January 12, 1869.*

The Secretary of War, in compliance with the request of the Committee of Elections of the House of Representatives, has the honor to submit a return of the vote by which James Mann was elected to the Congress from the second congressional district of Louisiana.

J. M. SCHOFIELD,  
*Secretary of War.*

[Special Orders No. 104.]

HEADQUARTERS FIFTH MILITARY DISTRICT,  
New Orleans, Louisiana, May 13, 1868.

I. The returns of the election held in the State of Louisiana, on the 17th and 18th days of April, 1868, in pursuance of Special Orders Nos. 55 and 63, current series, from these headquarters, having been made to the commanding general, in accordance with law, the result of the said election upon the question of ratification or rejection of the constitution framed by the late convention, and for members of the House of Representatives of the United States, is hereby announced for the information and guidance of all concerned:

Votes cast for the constitution, 66,152; against the constitution, 48,739; majority for the constitution, 17,413.

For members of Congress the returns of votes cast exhibit the following:

*First congressional district.*—J. Hale Sypher, 9,630; A. W. Walker, 6,885; H. N. Frisbie, 26; James Mann, 7; scattering, 28.

*Second congressional district.*—James Mann, 6,784; Simon Jones, 5,634; S. Straight, 202; A. P. Field, 133; Joseph P. Newsham, 10; J. Q. A. Fellows, 4.

*Third congressional district.*—Joseph P. Newsham, 18,257; J. Q. A. Fellows, 9,804; James Mushaway, 1,088; R. C. Wickliffe, 1,077; James Mann, 85; Simon Jones, 26; A. W. Walker, 8; S. Straight, 2; A. P. Field, 2; scattering, 4.

*Fourth congressional district.*—Michael Vidal, 14,166; John E. King, 9,482; C. L. Ferguson, 3,303; R. B. Stille, 1,687; A. Duperrier, 2.

*Fifth congressional district.*—W. Jasper Blackburn, 9,391; Ross Wilkinson, 7,138; P. J. Kennedy, 6,286; R. H. Snyder, 2; Eugene Tisdale, 2; scattering, 1.

The following-named persons, having received the greatest number of votes cast in their respective districts, are hereby declared duly elected members of the House of Representatives of the United States, viz:

J. Hale Sypher, first district; James Mann, second district; Joseph P. Newsham, third district; Michael Vidal, fourth district; and W. Jasper Blackburn, fifth district.

Certificates of election will be issued upon application at these headquarters.

By command of Brevet Major General R. C. Buchanan:

THOS. H. NEILL,  
*Major Twentieth Infantry, Bvt. Brig. Gen. U. S. A., A. A. A. G.*

ADJUTANT GENERAL'S OFFICE,  
Washington, D. C., January 11, 1869.

E. D. TOWNSEND,  
*Assistant Adjutant General.*

Official:



The *ex parte* and unauthorized testimony of Mr. F. Leon, taken before a justice of the peace in this district, January 11, 1869, since the death of Mr. Mann, is the only other evidence as to the votes cast at this election in this congressional district, and it is insisted by the counsel for the contestant that such sworn statement of this witness is better evidence than the return of General Buchanan, who, as contestant claims, "had no jurisdiction over congressional elections," and that "the sworn proof therefore stands upon higher ground than the voluntary statements of General Buchanan about a matter not within his jurisdiction."

He concedes, however, that by the reconstruction laws it is made the duty of the commanding general to receive and return the votes upon the ratification of the constitution. The contestant and his counsel, in assuming this position above stated, seem to have overlooked the provisions of the supplementary reconstruction act of March 11, 1868, subsequent to which this election was held, which act makes provision for the election of members of Congress at the same time that the vote is taken on the adoption of the constitution, and declares that "the same election officers who shall make the return of the votes cast on the ratification or rejection of the constitution shall enumerate and certify the votes cast for members of Congress." It is considered, therefore, that the commanding general, in making and certifying the returns of the votes cast at this election for members of Congress, was acting under the authority conferred by the reconstruction laws aforesaid, and that his return is higher evidence than, or at least not inferior to, the brief, general, and somewhat vague and indefinite statement of Mr. Leon, sworn to as aforesaid.

The House of Representatives, also, in admitting Mr. Mann and his colleagues from Louisiana to their seats on the certificate of said commanding general, as also in admitting members from Georgia and South Carolina on similar certificates, seems to have recognized this construction of the law and the jurisdiction of said officers in the matter of said election returns.

If, as the contestant claims, the said commanding general was a bitter partisan, strongly opposed to him and the political party with which he is identified, that may have tended to the prejudice of the contestant, but it does not appear sufficiently in evidence to falsify or make void his official returns.

From this return it appears that in the entire congressional district the aggregate vote for Mr. Mann was 6,784, and for Mr. Jones, 5,634, giving Mr. Mann a majority or plurality of 1,150.

It is not shown by the return, nor does it appear in evidence, what the vote was in the separate election precincts or voting places in the district, nor is it shown how many of these election polls or voting places there were in the district; consequently, were any fraud, intimidation, violence, or any other irregularity or illegality found at any one or more of the polls or election precincts sufficient to justify the rejection of that entire poll, or to require any change in the count, it would be impossible to do this, as the returned vote of any particular poll cannot be determined.

The evidence of the contestant tends to show some intimidation, unlawful interference, fraud, and irregularities at several of the voting places, particularly in regard to colored voters, who in some instances evidently were defrauded of their votes, either by being prevented by violence, intimidation, or fraud from voting, though duly qualified, or by having their ballots taken from them and other and different ballots substituted in their place and deposited in the ballot-box. At several



of the polls the election officers and the persons surrounding and controlling the polls seem to have been either late rebels or in full sympathy with them, and there is some testimony tending to show ballot-box-stuffing at one or two polls. But the evidence in regard to fraud, violence, intimidation, and other irregularities is too vague and indefinite in its character, and not brought home to sufficient election precincts, to enable the committee to judge how much the election was influenced or affected by these illegal acts and irregularities, or whether they were sufficient to change the result or vitiate the election, nor can they from it ascertain any considerable number of illegal votes cast or of legal voters who were intimidated or deprived of their votes; probably not one hundred in all are indentified where it is shown for whom the illegal vote was cast or for whom the legal voter would have voted.

The most favorable construction of the evidence for the contestant that could be given would not identify and count up additional votes enough in his favor to equal one-half of the majority returned for Mr. Mann, much less to give him the majority, even if all the votes assumed by witnesses to have been changed in the ballot-boxes or fraudulently put in were charged to the democratic vote, deducted from Mr. Mann's majority and counted for the contestant. The only remedy for or correction of the evils complained of, under the state of the case as presented, would be to set aside the returns, declare a vacancy, and order a new election, as it is impossible from the evidence to purge the poll; but this the contestant does not desire or insist should be done, nor do the committee consider the evidence sufficient to justify such a course.

So far as the returns and the evidence show, therefore, the contestant has not received a majority of the votes cast in said district for representative in Congress, but that majority was given to Mr. Mann.

But the contestant and his counsel further insist that Mr. Mann was constitutionally ineligible for the reason that he was not "when elected" an inhabitant of the State of Louisiana, (Constitution, art. 1, sec. 2, cl. 2,) and that the contestant, if he only received the next highest number of votes, should be declared elected, and the votes cast for Mr. Mann should be disregarded. In support of this position it is suggested on his part that, in the absence of any American precedent for this course, the faithful execution of the fourteenth amendment requires the establishment of such a precedent, and that, if voters may choose disqualified members, representation may be defeated in many States.

The committee does not consider the evidence adduced by the contestant in regard to Mr. Mann's residence or domicile (Mis. Doc. No. 13, pp. 20, 29, and 30) sufficiently clear and conclusive to justify it in declaring Mr. Mann constitutionally ineligible at the time of his election, even if the evidence on the part of Mr. Mann were rejected; but it is not necessary to decide upon this question of ineligibility, since, if Mr. Mann were admitted to have been ineligible at the time of holding the election, and the evidence of this held to be satisfactory and conclusive, it would not aid the contestant nor entitle him to the seat, but would only show that there was a vacancy. This is fully shown by the report of the committee in the case of *Smith vs. Brown*, (report No. 11, second session fortieth Congress,) sustained by the House, which, after declaring Mr. Brown not entitled to his seat by reason of disloyalty at the time of his election, at the same time refused to Mr. Smith the seat on the ground that he had not received a majority of the votes cast for representative at said election in said congressional district, and directed the Speaker to notify the governor of Kentucky that a vacancy existed in the representation in this House from the said congressional district of said State.



The language of that report is clear and explicit on this point, and is a full answer to the position insisted upon by the contestant and his counsel in this case, and a brief extract from it will best illustrate the views of the committee, and show that the question raised here is fairly met and decided in the case cited. In that case the committee says :

As has been shown, Parliament did enact a law that votes cast for one ineligible shall be treated as if not cast, and one having a minority only of the votes be thus elected. But neither has Congress nor Kentucky enacted any such law ; much less can this House alone by a resolution set it up, and that, too, *after the fact*, as a punishment for willful obstinacy and misconduct.

The right of representation is a sacred right, which cannot be taken away from the majority. That majority, by perversely persisting in casting its vote for one ineligible, can lose representation, but never the right to representation while the Constitution and State government shall endure.

If it be inquired whether a loyal minority have not rights which are thus extinguished, the answer is obvious. If all are legal voters, the right of one is no greater than that of another ; nor is it a valid objection that by this rule one district after another might be left without a representative, until representation might be destroyed. The Constitution has given into the hands of Congress power by law to make, alter, or amend all regulations as to the times, places, and manner of electing representatives.

If this is power enough to meet the exigency, it will be met when it arises. If here is not power enough, then it can be found in that instrument. When Congress has by law thus regulated elections, this House can, by resolution, conform its actions thereto, but not till then.

As this report was made prior to the announcement of the adoption of the fourteenth amendment, the committee, in quoting its language, intimates no opinion concerning any additional powers that may have been conferred upon Congress by said amendment.

It is proper, also, to add, as the subject is incidentally referred to in the extract quoted, that it was not claimed before the committee, on the hearing, that there was any statute of Louisiana on this question, nor has the attention of the committee been called to any such statute in force there providing for an election by the minority in case of the ineligibility of the candidate receiving the majority vote.

The contestant objects to all testimony taken on behalf of Mr. Mann, on the ground that the witnesses were sworn and testified before a notary public, an officer not authorized by the act of Congress to take testimony in such cases, and that no witness could be convicted of perjury for false swearing under such circumstances. The objection to the competency of the officer to take the testimony appears to have been taken in the first instance, and is so returned with the testimony. The objection is undoubtedly good under a strict construction of the law ; and the same objection would lie to all the testimony of the contestant, which was taken before a commissioner, an officer not authorized to take it by the act of Congress, although no objection appears to have been raised by Mr. Mann at the time ; but the view the committee has taken of contestant's evidence does not render it, in their opinion, very material whether the evidence is admitted or rejected. Nevertheless, as Mr. Mann is not now living and the objection goes to the whole of the testimony taken on his behalf, some of which has reference to the question of his eligibility at the time of the election, the committee has not deemed it proper for it to exclude the testimony on the objection, but has preferred to submit the question of its admissibility to the House, with whom the ultimate decision rests.

Mr. Mann having died, as has been stated, since he took his seat in this House and pending this contest, the committee therefore submits and recommends for adoption only the following resolution :

*Resolved*, That Simon Jones, not having received a majority of the votes cast for representative in this House from the second congressional district of Louisiana, is not entitled to a seat therein as such representative.



CALEB S. HUNT *vs.* J. WILLIS MENARD.

Mr. Menard claims to have been chosen at the election held November 3, 1868, to fill the vacancy occasioned by the death of Mr. Mann, and presents his certificate duly signed by the governor and attested by the secretary, under the seal of the State.

Mr. Hunt files his protest against the admission of Mr. Menard, claiming that he was elected to fill said vacancy, and accompanies his protest and claim to the seat with a statement, duly certified by the governor and secretary of state under seal, of the number of votes cast at said election for member of Congress to fill such vacancy, in each of the parishes of said congressional district; also the opinion of Randell Hunt, esq., as to the effect of the State law changing the boundaries of said election district subsequent to the election of Mr. Mann and prior to the said election of November 3, 1868. The said protest and papers filed by Mr. Hunt and referred to the committee, together with the certificate presented by Mr. Menard, are in terms as follows:

*Additional papers respecting the second congressional district of Louisiana.*

MR. SPEAKER: Mr. J. W. Menard claims to have been elected a representative to the fortieth Congress from the second congressional district of the State of Louisiana to fill the unexpired term of the late James Mann, and presents a certificate to that effect from the governor of said State.

I claim to have been duly elected to the same position. I therefore very respectfully beg you, as Speaker of the House, to do me the kindness and justice to present this my solemn protest against his admission to said seat until the facts can be fairly brought to the knowledge of the House; and, meanwhile, I state the material facts to be as follows, susceptible of overwhelming proof, to wit:

1. Mr. Menard and I were candidates for election to fill the unexpired term or vacancy caused by the death of said James Mann.

2. But after his election as representative to the fortieth Congress, and before the election to fill the vacancy occasioned by his death, the legislature of Louisiana reapportioned the State for congressional purposes, changing the districts in very material respects.

3. And in what was Mann's district, that is, the second district, Mr. Menard received only 93 votes, and I received 11,535 votes; but all the votes of this precinct or parish were rejected by the committee of canvassers on purely technical grounds of informality in their returns, in most manifest violation both of law and justice, so that the certificate was awarded Mr. Menard by the governor upon a state of facts showing that Mr. Menard did not receive a single vote in Mr. Mann's late district.

4. It is, however, further true that Mr. Menard and I were voted for as successors to Mr. Mann, not only in what was his district, the parish of Orleans, but also in the parishes which form the second district under the apportionment of 1868, to wit: the parishes of Lafourche, St. Charles, St. James, Terrebonne, St. John the Baptist, Jefferson, and Orleans, and in the district so constituted he received 8,678 votes, and I received 18,341 votes, giving me a majority of 9,663 votes of the votes legally cast by legal electors.

5. Yet, for merely technical reasons, based upon trifling informalities in returns, occasioned by the non-observance of certain statutory requirements, which were directory only and did not at all affect the regularity of the election or qualifications of the electors, the votes of the parishes of Orleans, (the original second district,) Terrebonne, St. John the Baptist, and Jefferson were rejected by the committee of canvassers, contrary to the laws of Louisiana, and in violation of the general rules and principles of law applicable to such cases.

6. And upon the returns so made to the governor, for reasons best known to himself, he gave a certificate to Mr. Menard, because the returns so accepted gave him a majority of 2,275 votes over me, when, in fact, I have a majority over him of 9,663 in the district as constituted by the law of 1868, and of 11,442 in the district as constituted under the law under which Mr. Mann was chosen.

7. These facts, as to the votes given for us, respectively, in the parish of Orleans, which was the original second district, and in the other parishes now constituting said district, are substantially set forth and certified by the same governor, and attested by the secretary of state of Louisiana, which statements and certificate are attached hereto, and made a part of this protest.

8. The law of the State of Louisiana bearing upon this case is set forth in the opinion of Randell Hunt, a distinguished lawyer of New Orleans, always a Union man, which is also attached hereto and made a part hereof.



9. From all which I most respectfully and confidently submit that it most conclusively appears that Mr. Menard is not, and that I am, duly elected, and by an overwhelming majority, to represent said district in Congress, for the unexpired term of Mr. Mann, and that the certificate was withheld from me by the governor in most manifest violation of the law and justice.

Wherefore, I claim and respectfully demand admission to said seat, and ask the House to do me the justice to refer the entire controversy to the appropriate committee, for examination and report, before either claimant is sworn in or admitted to said seat.

Respectfully submitted.

CALEB S. HUNT.

The following is a true statement by parishes of the number of votes cast for member of Congress in the second congressional district, held November 3, 1868, as shown by the returns on file in the office of the secretary of state, together with the parishes rejected and reasons thereof:

Parishes.	Fortieth Congress.		Forty-first Congress.	
	Caleb S. Hunt.	J. W. Menard.	L. A. Sheldon.	Caleb S. Hunt.
Lafourche .....	1,799	1,613	1,613	1,799
St. Charles .....	264	1,335	1,335	264
St. James .....	770	2,160	2,160	770
	2,833	5,108	5,108	2,833

The returns from the following parishes were rejected :

Parishes.	Fortieth Congress.		Forty-first Congress.	
	Caleb S. Hunt.	J. W. Menard.	L. A. Sheldon.	Caleb S. Hunt.
Orleans .....	11,535	93	125	11,535
Terrebonne .....	1,297	1,541	1,541	1,297
St. John the Baptist .....	452	1,274	1,278	452
Jefferson .....	2,224	662	662	2,224
	15,508	3,570	3,606	15,508

#### PARISH OF ORLEANS.

The returns from that part of the parish of Orleans forming a part of the second congressional district were rejected for the reason that the returns were made by the boards of supervisors of registration appointed by authority of an act (No. 92) entitled "An act to facilitate the registry of voters under an act to create a board of registration to superintend the registration of the qualified voters of the State," approved September 7, 1868, said boards having no authority to perform any duties except that of registration, for which they were especially appointed.

#### JEFFERSON.

The returns from Jefferson parish were thrown out for the reason that two separate returns were received, one signed by S. S. Henry, as chairman of the board of supervisors.



at Carrollton, and the other by J. A. Wagner, H. P. Philips, John Payn, chairman, and J. H. A. Roberts, it being impossible to tell which, if either, was the correct return.

## TERREBONNE

The returns from this parish were made up and forwarded to the secretary of state by the commissioners of election appointed for the various polls, the only thing in shape of a compilation being a statement showing the number of republican and democratic votes cast, signed by the supervisors.

## ST. JOHN THE BAPTIST.

The returns from this parish being signed only by one of the members of the board of registration, and there being no witnesses' names signed thereto, was considered a violation of the twenty-fifth section of act No. 164, approved October 19, 1868, which requires the supervisors of election to repair to the court-house, and, in the presence of at least two witnesses, to compile the return sent in by commissioners. Section 25 makes it the duty of the supervisors to forward triplicate returns to the secretary of state, and no one supervisor has the right.

Mr. Hunt and Mr. Menard were opposing candidates to fill the unexpired term of Mr. Mann, (fortieth Congress.) Mr. Hunt and Mr. Sheldon were opposing candidates for the forty-first Congress. The vote for Mr. Hunt was the same for both terms.

H. C. WARMOTH,  
*Governor of Louisiana.*

A true copy :  
[SEAL]

GEO. E. BOVEE,  
*Secretary of State.*

By the act of the legislature of the State of Louisiana, approved April 4, 1865, No. 54, entitled "An act to divide the State of Louisiana into five congressional districts," it was enacted that the second congressional district shall comprise that portion of the parish of Orleans which is included between St. Louis, Rampart, and Canal streets and the Mississippi River, third, second, and first representative district of the parish of Orleans, and that portion of its tenth representative district designated by existing statutes as the Tenth ward of the city of New Orleans. (Section 1.)

It was further enacted that the third congressional district shall comprise that part of the tenth representative district of the parish of Orleans designated as the Eleventh ward of the city, and the parishes of Jefferson, Terrebonne, St. Charles, St. John the Baptist, St. James, Lafourche, and other parishes of the State enumerated therein.

Mann was elected under this law to fill the congressional term of member of the House of Representatives in Congress for the fortieth Congress, which will expire on the 4th of March next, to represent the second congressional district, above described. He died, and an election was ordered to fill the vacancy occasioned thereby. That vacancy can only properly and legally be filled by a representative chosen by the qualified voters of the second congressional district of the State of Louisiana, as it is designated and prescribed by the act of 1865. No act redistricting or dividing the State of Louisiana into congressional districts for any future congressional term can have any bearing to change the voters for the congressional term for which Mr. Mann was elected. The vacancy, therefore, in the present representation of the State in Congress, by the death of Mr. Mann, can only be filled by the vote of the qualified electors of the second congressional district, as heretofore described.

The act of the legislature of the State, of 1868, is not of a retrospective character, but is intended simply to divide the State into congressional districts for future terms from its date, after the 4th of March, 1869.

On the request of Mr. C. S. Hunt, I have considered the question embraced in the above statement and given this opinion: No votes from Lafourche, St. Charles, St. James, Terrebonne, St. John, Jefferson, and the part of the parish of Orleans not embraced in the second congressional district under the act of 1865, approved April 4, can be counted as cast for the representative to fill the vacancy occasioned by the death of Mr. Mann.

Considered at New Orleans this 5th day of December, 1868.

RANDELL HUNT.

STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,  
*New Orleans, November 25, 1868.*

To all to whom these presents may come:

Know ye that, in accordance with the provisions of an act entitled "An act relative



to elections in the State of Louisiana," approved October 19, 1868, an election was held by the qualified electors of this State on the 3d day of November, anno Domini 1868, for five members of Congress, to represent the first, second, third, fourth, and fifth congressional districts of the State of Louisiana in the forty-first Congress of the United States, and for one member of Congress from the second congressional district to the fortieth Congress to fill the vacancy occasioned by the death of Hon. James Mann;

And whereas the returns of said election, made to the secretary of state as required by law, have been carefully examined, compared, and attested by the proper officers whose duty it was to examine the same;

And whereas it has been ascertained from said returns that J. Willis Menard received 5,107 votes, and Caleb S. Hunt 2,833 votes, cast at said election:

Now, therefore, I, Henry C. Warmoth, governor of the State of Louisiana, do hereby certify that J. Willis Menard received a majority of the votes cast for representative to the fortieth Congress from the second congressional district of the State of Louisiana.

In testimony whereof I have hereunto set my hand and caused the seal of the State to be affixed this twenty-fifth day of November, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third.

[SEAL.]

H. C. WARMOTH,  
*Governor of the State of Louisiana.*

GEO. E. BOVEE, *Secretary of State.*

The election to fill said vacancy was held at the same time with the general election in said State for the choice of presidential electors and for representatives in the forty-first Congress.

From the said certified statement it will be seen that the whole number of votes cast at said election to fill such vacancy in said district was 27,019, of which votes so returned to the secretary of state, 19,078 were rejected by the committee of canvassers and the returns thrown out, being a large majority of the entire vote of the district as returned, and the certificate was given to Mr. Menard on the vote of but three of the seven parishes of the district, and casting in the aggregate only a vote of 7,941. The vote of the single parish of Orleans, one of those rejected, was 11,628, being nearly four-ninths of the entire vote of the district, and 3,687 votes more than the entire vote on which the certificate was given to Mr. Menard.

The reason given in the certified statement for the rejection of the vote of the parish of Orleans, viz, "that the returns were made by the boards of supervisors of registration," shows that in this respect the returns were made as required by law, and that the objection is invalid.

By the provisions of section 25 of act No. 164, Laws of Louisiana, 1868, page 223, it is expressly made the duty of said supervisors of registration in each parish to make out and forward said returns to the secretary of state. It is unnecessary to notice further the objections stated to the returns from the other parishes rejected, (although those urged against Jefferson and Terrebonne would seem to be frivolous,) since, if any valid election was held there, the parish of Orleans being properly returned, should be counted, which would give Mr. Hunt a majority over Mr. Menard so great that it would not be overcome by the vote of all or any of the other parishes, if they were counted, and in no event can Mr. Menard be shown by the returns to have received a majority vote in the district.

It is objected, however, by Mr. Menard, that no notice of contest has been served on him as required by law, and that therefore Mr. Hunt is not properly here to contest his right to the seat. In reply to this it is urged by Mr. Hunt and his counsel that the certificate of Mr. Menard bears date November 25, 1868, and about the time when the final decision of the canvassers was made, and that as the session of Congress was to commence on the first Monday in December next succeeding, and to close on the 4th of March following, to wait the time allowed by law for giving notice and answer, and then for taking testimony, would be



to permit Mr. Menard to take and hold the seat during the whole of the remaining official term, and to prevent the contest from ever being heard by this Congress, which only has jurisdiction of it. He also suggests that as no other evidence was needed by him to support his claim than the certified copy of the returns and the reasons given for their rejection, he has, by filing his protest with the House, addressed to the Speaker, stating his objections to Mr. Menard's claim to the seat, and the grounds on which he claims the same, with the evidence by which it is supported, given Mr. Menard sufficient notice, under the circumstances, and that a literal compliance with the terms of the acts of Congress was impossible without defeating him in the contest by putting off taking the evidence and the hearing of the case beyond the lifetime of the Congress to which it relates.

He also urges that the statute is directory, and has been so treated in some cases arising under it in the House, and that under the Constitution the power exists in this Congress, independent of the statute, to hear and determine this case as presented.

Were it necessary to decide this question, it is proper to say that Mr. Hunt presents some very good reasons in justification of the course he has pursued under all the circumstances of the case, but the view the committee has taken of the election itself does not, in its judgment, require that it should pass upon this objection raised by Mr. Menard, and also since it is the right of any of the legal voters of the district to petition Congress and to call in question the right of any person claiming the seat.

It is objected by Mr. Hunt that the district from which Mr. Menard claims to have been elected is a different district in its territorial limits to that one which Mr. Mann was elected to represent, and that the vote on which Mr. Menard claims to have been elected is entirely from parishes which never were in the district represented by Mr. Mann, and which have been incorporated into the second district as now known, by an act of the legislature of Louisiana passed since Mr. Mann took his seat in this House, which statement as to the territorial organization and vote of the district as now known, appears to be correct.

The second congressional district of Louisiana, as it existed at the time Mr. Mann was elected therefrom and took his seat in this House, was created by act No. 54, (Laws Louisiana, 1864-'65, p. 144,) approved April 4, 1865, dividing the State into five congressional districts, and comprised "that portion of the fourth representative district of the parish of Orleans which is included between St. Louis, Rampart, and Canal streets and the Mississippi River, third, second, and first representative districts of the parish of Orleans, and that portion of the tenth representative district of the parish of Orleans which is known by existing statutes as the Tenth ward of the city of New Orleans."

By a subsequent act of the legislature of Louisiana, approved August 22, 1868, making a new division of the State into five congressional districts, the second congressional district was changed so as to comprise "all that portion of the parish of Orleans, on the left bank of the Mississippi River, above and west of Canal street in the city of New Orleans, comprising the first, second, third, and tenth representative districts of the parish of Orleans, and the parishes of Jefferson, St. Charles, St. John the Baptist, St. James, Lafourche, and Terrebonne," and this election to fill the vacancy in the original second district, caused by the death of Mr. Mann, was held in the limits last above prescribed for the second district by said act of August 22, 1868, and not in the limits prescribed by the act of April 4, 1865; and both Mr. Menard and Mr. Mann



claim to have been chosen by the electors of, and to represent, said new district so created by act of August 22, 1868. It will be seen that this new second district, created by the act of 1868, not only does not embrace all of the same portion of the parish of Orleans, as the one created by act of 1865, but also includes the parishes of Jefferson, St. Charles, St. James, Lafourche, and Terrebonne, none of which were in the district represented by Mr. Mann, but were all included in the third congressional district, and are now represented in this House by the member from said district, (Hon. Mr. Newsham,) whom they participated in electing. That portion of the fourth representative district of the parish of Orleans which was included in the second congressional district of Mr. Mann by the act of 1865 has by the act of 1868 been cut off from it, and the portion of the tenth representative district of said parish of Orleans not before included in the old congressional district, and known as the Eleventh ward of the city, has also been added to the new second district, and was by the act of 1865 a part of the third congressional district.

The largest portion of this new second congressional district, as created by the act of the legislature of Louisiana of August 22, 1868, and comprising a majority of the voters of said district, is made up of a part of one of the other old districts of the State now having a representative in this House, to wit, the third congressional district, as created by the act of 1865; and the singular spectacle is presented of a vacancy in the second congressional district, claimed to have been filled by the voters of the third district, who already have a representative chosen by them sitting in this House.

So far as the numbering of this new district is concerned it might with as much propriety have been called the third district as the second, and it would be difficult to say in which of the new districts as created and arranged by the act of August 22, 1868, the vacancy had occurred, or to which of the new districts the governor of the State should have issued his writ of election to fill the vacancy which the death of Mr. Mann had caused if the election to fill the vacancy was compelled to be holden under the law of 1868 creating the new districts. The only case to which the attention of the committee has been called as a precedent is that of *Perkins vs. Morrison*, (Bartlett's Elec. Cas., p. 142,) which is against this objection raised by Mr. Hunt, but in that case there was a minority report signed by four of the Committee of Elections, and the report of the majority was sustained in the House by the close vote of only 98 to 90, and, in the opinion of your committee, the soundest reasoning is contained in the report of the minority in that case, and sustains the objection raised here against the validity of this election.

The very objection which was urged in that case and which the majority in the concluding part of their report were compelled to admit, as a consequence of their position, is exemplified in the case now under consideration, and it is thus stated in their report:

It was, that if the legislature of New Hampshire could change the boundaries of the district, they might have so divided it as to render it impossible to determine to which district the governor's precept should have been sent.

The act of the legislature of Louisiana of August 22, 1868, making a new division of the State into its five congressional districts, by its terms, purports to repeal all laws and parts of laws in conflict with said act, but is silent on the subject of vacancies that might occur in the districts as then existing.

The language of the minority report in the case of *Perkins vs. Morri-*



son, on the New Hampshire statute, is appropriate on this point as well as on this case generally, and we quote from it as follows:

It does not purport to provide for any method of filling vacancies that might occur in the future, and beyond all question it was understood as providing only for the election of members of future Congresses. Such are the terms of the act, and such must also be its spirit. A vacancy in the House of Representatives is the occurrence of an event by which a portion of the people are left unrepresented, and the filling of that vacancy is directed by the Constitution in such explicit language as requires no aid from State enactments to perfect the right. The second section of the first article in the Constitution contains the following provision: "When vacancies occur in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies." This is the only provision of law on the subject of vacancies, and it is ample and sufficient. No act of the legislature of New Hampshire purports to interfere in the matter, and the act of July ought not, in our belief, to be understood as requiring the vacancy occasioned by General Wilson's resignation to be filled by any other people than those whose representative he was. Had such been the purpose of the act, we believe it was incompetent for the law-making power of that State to accomplish the object while this House hold the right to judge of the election of its members.

It would not be a preservation of the purity of the elective franchise, nor would it be a just guardianship of the republican principle that all shall have a right to be represented, to admit the power of a State legislature to provide that a portion of the people should have two representatives in Congress, while another portion should have none, or not be represented by the man of their choice. \* \* \* It is, besides, in disregard of the law of Congress of June, 1842, which declares that no one district shall be entitled to two representatives. If the people who choose a representative are not entitled to fill the vacancy happening by his resignation, it is impossible to tell what portion of the population may most properly exercise this privilege. It seems to be assumed in this case that the new district made by the act of July 11, 1850, and numbered three, has the right to send a representative in place of General Wilson, because the number corresponds with that which General Wilson represented. But the order of numbering is an unimportant circumstance, and the first or the fourth district might have been as properly called the third as any other; yet it would be a strange assertion that on this account such district would be authorized to have two representatives during the remainder of the thirty-first Congress.

This reasoning, which your committee consider as sound and pertinent, applied to the case under consideration seems to be conclusive against this election; and it may also be added that whatever power a State legislature may have in the matter, it is absurd to say that a district when once established and a representative chosen therein, is not to continue for the whole Congress for which the election has once been operative. No election to fill the vacancy caused by the death of Mr. Mann appears to have been notified or held in the whole of said district as represented by him.

The returns on which Mr. Menard predicates his claim to the seat are from parishes wholly outside of said district, and comprised in the district which Hon. J. P. Newsham was chosen to represent and is now representing in this house, (act No. 54, Laws of Louisiana, 1864-'65, page 144,) and which parishes, in the judgment of your committee, had no lawful right to participate in the election to fill the vacancy in another district, caused by the death of Mr. Mann.

But while the objection is thus fatal to Mr. Menard's claim to the seat, it is equally fatal to the claim of Mr. Hunt.

The returns for him are also made from the parishes constituting the new second district, as created by the law of 1868, and not from that portion of the parish of Orleans which constituted the second district represented by Mr. Mann.

No returns it would seem are made from, nor does any election to fill such vacancy appear to have been held in, all that portion of the fourth representative district of the parish of Orleans which was comprised in Mr. Mann's district, while returns, it is evident, are included from the entire fourth representative district of the parish of Orleans,



a large portion of which is not included in Mr. Mann's district. The election having been held in, and the returns being made from, the new second district, as created by the act of August 22, 1868, it is impossible to tell what the vote is in that part of the parish of Orleans which was included in Mr. Mann's district, and is now included in the new second district, or what the vote would have been to fill the vacancy in that portion of the parish of Orleans which was included in Mr. Mann's district, but is not now included in the new second district, and in which no election to fill this vacancy appears to have been held.

How many votes may have been added to Mr. Hunt by the new portion added, or taken away from Mr. Menard by the old portion not included in this new district, it is impossible to determine. The vote in the new portion is not separately returned, and no election was held in the said old portion to fill such vacancy, and Mr. Hunt, predicated his claim to the seat on the election so held in such new district and on the returns so made, fails to show himself chosen by the electors of the district made vacant by the death of Mr. Mann, and his claim, also, must be rejected.

It is presumed that this election was attempted to be held under the executive authority, as provided by the Constitution (art. I, sec. 2) in cases of vacancy. No copy, however, of the governor's proclamation or writ of election, which is said to have been issued, has been laid before the committee, but a copy of the notice of election issued by the sheriff of the parish of Orleans has been exhibited to the committee, a printed copy of which, taken from the New Orleans Crescent of October 27, 1868, is in the words and figures following, viz:

#### NOTICE OF ELECTION.

SHERIFF'S OFFICE, PARISH OF ORLEANS,  
New Orleans, October 16, 1868.

Pursuant to a proclamation of his excellency H. C. Warmoth, governor of the State of Louisiana, bearing date the 19th day of September, A. D. 1868, all the qualified voters of the parish of Orleans are hereby notified that an election will be held on Tuesday, the 3d day of November, A. D. 1868, for—

One elector for President and Vice-President of the United States, and one representative to Congress, from the first electoral and first congressional district, composed of all that portion of the parish of Orleans on the right bank of the Mississippi river, and so much of said parish on the left bank of said river as is below and east of Canal street, in the city of New Orleans, comprising the fourth, fifth, sixth, seventh, eighth, and ninth representative districts of the parish of Orleans and the parishes of St. Bernard, Plaquemines, St. Tammany, Washington, St. Helena, and Livingston.

One elector from the second electoral district, and one representative for the unexpired term, (made vacant by the death of Hon. James Mann,) and one for the regular term, from the second congressional district, composed of all that portion of the parish of Orleans on the left bank of the Mississippi River above and west of Canal street, in the city of New Orleans, comprising the first, second, third, and tenth representative districts of the parish of Orleans, and the parishes of Jefferson, St. Charles, St. John the Baptist, St. James, Lafouche, and Terrebonne.

One elector from the third electoral district, composed of the parishes of St. Mary, St. Martin, Assumption, Ascension, Vermillion, Calcasieu, Lafayette, St. Landry, Iberville, East Feliciana, East Baton Rouge, and West Baton Rouge.

One elector from the fourth electoral district, composed of the parishes of West Feliciana, Point Coupée, Avoyelles, Rapides, Sabine, Natchitoches, De Soto, Caddo, Bossier, and Winn.

One elector from the fifth electoral district, composed of the parishes of Claiborne, Bienville, Jackson, Union, Morehouse, Carroll, Ouachita, Madison, Caldwell, Franklin, Tensas, Catahoula, and Concordia; and two electors for the State at large.

The polls will be opened in each election precinct in the said parish of Orleans from the hour of 7 o'clock a. m. till 6 o'clock p. m. on the day and date before mentioned, to wit: Tuesday, the 3d day of November, A. D. 1868, for the purpose of receiving the votes of the qualified voters of the parish of Orleans, under the supervision of the commissioners and clerks to be appointed by the authorities designated by law. The



election to be conducted and returns made to the undersigned returning officer according to law.

THOS. L. MAXWELL,  
*Sheriff Parish of Orleans.*

From this election notice it will be seen that the second representative district, in which the election to fill the vacancy is notified to be held, is specifically described as fixed by the act of August 22, 1868, and the notice not only is for the election of a representative to fill the vacancy caused by Mr. Mann's death, but also a representative for the full term for the forty-first Congress, showing that the election was held in the new second district for both, and the returns we have seen were made from said new district for both and from the same parishes.

Both candidates for the vacancy claiming to have been elected and entitled to the seat, neither has sought or desired to prove the election itself invalid or to urge any such objection to it, but, on the contrary, it is necessary for each to insist upon its validity in support of his claim to the vacant seat.

This may in some degree account for the very slight showing that has been made by either party on the hearing of facts in relation to this election. There are some facts which appear in the evidence bearing upon this November election in the State of Louisiana, to which your committee would now call attention: When Mr. Mann was elected, the second district, as then constituted by the act of April 4, 1865, was wholly within the parish of Orleans, though not comprising the whole of said parish, and his aggregate vote was in April, 1868, 6,874, and the vote for Mr. Jones, as returned, was 5,634, besides 349 scattering votes given for other republican candidates, making the aggregate vote opposed to Mr. Mann, 5,983. At the late election in November, only a little over six months after, when under the act of August 22, 1868, other parishes were included in this district and a portion of the parish of Orleans, this portion of the parish of Orleans now in the district returns 11,535 votes for Mr. Hunt for both the fortieth and forty-first Congresses, and but 93 votes for Mr. Menard for the fortieth Congress, and 115 for Mr. Sheldon for the forty-first Congress. The smallness and wonderful decrease of the republican vote, the vastness and wonderful increase of the democrat vote, and its exact coincidence for both Congresses, are all somewhat strange and not easily susceptible of satisfactory explanation on the theory of a fair and honest election.

It also appears from the evidence that at the April election in 1868 the supporters of the reconstruction policy cast in favor of the constitution in the entire State 66,152 votes, while against the constitution there were cast only 48,739, leaving a majority of 17,413 votes in favor of the constitution, and, in the aggregate, the five regular republican candidates for Congress at said election received nearly the same majority (16,985) over their democratic opponents, in an aggregate vote of 111,156, nearly as large as that cast on the adoption of the constitution, and all except Mr. Jones were elected, while at this November election not a republican candidate for Congress in the State is returned as having a majority, the only two receiving a certificate, Mr. Menard for the vacancy and Mr. Sheldon for the full term from this second district, each obtaining it by having a large portion of the returns rejected and thrown out, as shown by the certified return and statement in evidence before the committee.

There are some matters, also, of which this House can take notice in this connection.

It is well known that in the city of New Orleans, and in many other



parishes of Louisiana, for some weeks immediately preceding this election, civil disturbance, disorder, and crime prevailed to such extent by reason of the lawlessness of the disloyal element prevalent there that the civil authorities were unable to put it down, being prohibited by law from calling out the militia to maintain the peace or to enforce the laws.

The State legislature had called ineffectually upon the national Executive for troops to uphold the law, to put down lawlessness and crime, and to protect loyal citizens in their persons and property.

Meanwhile a systematic course of intimidation, violence, plunder, robbery, assassination, and murder was practiced in many portions of the State towards the loyal Union citizens, especially the citizens of color; their property and lives were in jeopardy on account of their loyalty; and a large portion of the State, and particularly the city of New Orleans, was controlled by lawless partisans of the late rebellion, many of them armed, rendering it unsafe and perilous for loyal citizens to freely speak their sentiments, participate in political meetings, or to attend upon and vote at the election; and on the 26th of October, 1868, the governor of the State announced to the department commander that the civil authorities in the parishes of Orleans, Jefferson, and St. Bernard, were unable to preserve order and protect the lives and property of the people; and the condition of the city immediately thereafter may be inferred from a statement made in a communication from the governor to one of the United States senators from that State, of December 20, 1868, which was laid on the desks of the members of the House in the early part of this session, wherein he says that "armed white men patrolled the streets night and day, sacking republican club rooms, the residences of Union citizens, churches, and school-houses. During the week preceding the election over sixteen persons were killed in New Orleans." He further adds that, notwithstanding an order of the commanding general to the contrary, "democratic clubs did have processions, and armed bands continued their violence up to the day of election. The week preceding the election was one of intense excitement, the whole city was filled with alarm.

"My parlor was constantly filled with men who brought reports of outrages upon their persons and property. A constant stream of men ran from the gun stores of the city with arms and ammunition, and every evidence of general tumult and rioting was apparent. During this time I was in daily communication with the commanding general, who expressed great concern and lamented the meager force at his disposal. It was so small that General Buchanan stated, in General Rousseau's presence, that he (General R.) would be as much justified in retiring with his troops as he would before an enemy of superior force."

These statements give a sufficient explanation of the vote returned from the parish of Orleans, and as to this parish would seem to justify the concluding statement made by the governor in said communication as to the election generally, "that the result was attained by the most shameless resort to murder, assassination, tumult, and intimidation, not to speak of proscription, that was ever known in this country." Said letter of Governor Warmoth, with the reply of General Buchanan, of January 20, 1869, and the rejoinder of Governor Warmoth, of January 26, are appended to this report, and marked A, B, and C.

Sufficient of these matters exist of which notice may be taken in connection with the facts in evidence in the case to justify the conclusion, in the opinion of your committee, that no valid election has been held to fill the vacancy in the said second congressional district caused by



the death of Mr. Mann. Your committee, therefore, recommends the adoption of the following resolution :

*Resolved*, That neither J. Willis Menard nor Caleb S. Hunt is entitled to a seat in this House as a representative from the second congressional district of Louisiana, to fill the vacancy caused by the death of James Mann.

A.

*Letter of Governor Warmoth, of Louisiana, to Senator Kellogg, on the subject of the late election in that State.*

STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,  
New Orleans, December 20, 1868.

MY DEAR SIR: In reply to your letter of recent date, I have to say, that the personal relations between myself and General Rousseau have been pleasant and courteous. He consulted with me freely, and sought my advice as to the best means of preserving the peace during the late troubles. We differed widely as to many of the means employed for that purpose. In my first interview with him I directed his attention to the fact that Congress had, by the act of March 2, 1867, stripped the State government of the power to organize militia—its reserve force in the event of forcible resistance to its authority. I informed him of the existence of secret armed societies, the object of which was to overturn the State government and disfranchise the colored people, and that I should rely upon him, as the representative of the forces of the United States, whose laws he was here to maintain, and through which the government I administered was established, to repress violence and insure peace and tranquillity. He replied that he would, as far as it lay in his power, use every effort to accomplish the objects indicated. I did not find General Buchanan, General Rousseau's subordinate, and in the immediate command of the troops in this State, apparently as cordial, or so much disposed to act in harmony with the civil authorities.

At an interview between General Rousseau, General Buchanan, General Hatch, and myself, I became satisfied that the State had no friend in General Buchanan, and that but little reliance was to be placed in his active co-operation. He was severe in his criticisms, and seemed to sympathize with the hostility entertained by the enemies of the government to the Metropolitan Police department, and suggested, as a necessity, that the old rebel force be restored. Our interview terminated without any satisfactory understanding. Subsequently General Rousseau ordered all the troops into the city, with the exception of General Mower's regiment, the Thirty-ninth Infantry. I urged him to bring this regiment from Ship Island and station it also in the city and adjoining parishes. I told him that the turbulent elements boasted that the troops about the city (all white) would not fire upon them, and that the moral effect of a black regiment in the city would be worth a brigade of white troops. To this request General Rousseau at first assented, but afterwards, to my surprise, replied that the effect of such a movement would be to incense the people all the more, and that a collision could not be avoided, and that, when once begun, the colored troops could not be relied on, and, even if they could, the whole force would not be sufficient to withstand the onslaught of the armed citizens. To these views I entirely dissented. I informed General Rousseau on the 18th day of October that I had some days previously written a private letter to the Secretary of War, on the subject of the impending troubles, and predicting that, unless more troops were sent to the State, there could be no hope of a peaceable election, but, on the contrary, I feared bloodshed; to prevent which I had requested that two additional regiments be sent to the State. General Rousseau said he was glad I had done so, and that he would telegraph immediately to the Secretary himself, and afterward showed me the Secretary's reply, which was to the effect that General Gillem, of Mississippi, had been instructed to forward all of his available troops at once, and that it was the best the government could do.

After four days of intense excitement, resulting from the troubles in Jefferson parish, where armed bands of men were shooting negroes, or driving them to the swamps, having driven the police force away from Gretna, in the face of a company of United States infantry, sent to aid them in maintaining order; when the people of St. Bernard parish were in a state of civil war, and when the streets of New Orleans were filled with armed bands of white men, also killing negroes, and bidding defiance to the police and laws of the State, I determined to throw the responsibility of preserving order upon the representative of the general government, which had stripped me, by the act of March 2, of the power to organize a force for that purpose. On the 26th of October I addressed the following letter to General Rousseau:

“GENERAL: The evidence is conclusive that the civil authorities in the parishes of



Orleans, Jefferson, and St. Bernard are unable to preserve order and protect the lives and property of the people.

"The act of Congress prohibiting the organization of militia in this State strips me of all power to sustain them in the discharge of their duties, and I am compelled to appeal to you to take charge of the peace of these parishes, and use your forces to that end.

"If you respond favorably to my request, I will at once order the sheriffs and police forces to report to you for orders.

"Very respectfully, your obedient servant,

"H. C. WARMOTH,  
"Governor of Louisiana.

"Major General L. H. ROUSSEAU,  
"Commanding Department of Louisiana."

In doing this I had no purpose of avoiding responsibility, but I was determined that no question of authority should be raised by the military commandant. General Rousseau telegraphed my letter to the Secretary of War, indorsing what I stated, and received the following reply:

"WAR DEPARTMENT,  
"Washington, October 26, 1868.

"Brevet Major General L. H. ROUSSEAU,  
"Commanding Department of Louisiana, New Orleans:

"Your dispatch of the 26th, forwarding a message from the Governor of Louisiana, and asking instructions, has been received. You are authorized and expected to take such action as may be necessary to preserve the peace and good order, and to protect the lives and property of citizens.

"J. M. SCHOFIELD,  
"Secretary of War."

It was then the duty of General Rousseau to have issued his proclamation, enjoining such regulations as might have been necessary to have preserved the peace and enforced it with his troops. This was my advice to him, but he believed he could accomplish more by diplomacy than by force, and did not issue any proclamation until the night of the 28th of October. In the mean time armed white men patrolled the streets night and day, sacking republican club-rooms, the residences of Union citizens, churches and school-houses. During the week preceding the election, over sixteen persons were killed in New Orleans. On the night of the 28th of October General Rousseau issued the following:

"HEADQUARTERS DEPARTMENT OF LOUISIANA,  
("STATES OF LOUISIANA AND ARKANSAS,)  
"New Orleans, Louisiana, October 28, 1868.

"To the People of New Orleans:

"FELLOW CITIZENS: I have received instructions from the authorities at Washington to take such action as may be necessary to preserve peace and good order, and to protect the lives and property of citizens. As the city is quiet to-day, I think it a proper time to make the above announcement, and to call upon all law-abiding citizens to aid me hereafter in carrying out these instructions, and to that end they are earnestly requested to refrain from assembling in large bodies on the streets, to avoid exciting conversation and other causes of irritation and excitement, and to pursue their ordinary vocations as usual. The police force of the city has been reorganized and inefficient members have been dropped from the rolls and others appointed in their places; and General J. B. Steedman is appointed chief of police, *pro tempore*, by the board of police commissioners. General Steedman and his police force will be supported by the military, and assurance is given alike to the peaceful and the lawless that everything at my command and to the utmost of my ability will be used in the endeavor to obey these instructions.

"For the present, political processions and patrolling the streets by armed men are prohibited.

"LOVELL H. ROUSSEAU,  
"Brevet Major General U. S. A., Commanding Department."

In the face of this order democratic clubs did have processions, and armed bands continued their violence up to the day of election. The week preceding the election was one of intense excitement—the whole city was filled with alarm. My parlor was constantly filled with men who brought reports of outrages upon their persons and property. A constant stream of men ran from the gun stores of the city with arms and ammunition, and every evidence of general tumult and rioting was apparent. During this time I was in daily communication with the commanding general, who expressed



great concern, and lamented the meager force at his disposal. It was so small that General Buchanan stated, in General Rousseau's presence, that he (General R.) would be as much justified in retiring with his troops as he would before an enemy of superior force. Such was the condition of affairs in the adjoining parishes of St. Bernard, Orleans, and Jefferson for the six days preceding the election; while for weeks previous a state of lawlessness existed in more than half the parishes of this State, affecting the security of every citizen.

You ask me the cause of all this trouble. The answer is to be found in the deep-seated animosity of the rebel element of this State, unwhipped of justice and turned loose by Andrew Johnson upon the country without a rebuke, and allowed to resist by force the government established through congressional law by the people of this State; in the contumacy of the old ruling aristocracy, who believe they were born to govern, without question, not only their slaves, but the masses of the white people; in the lack of sufficient physical force to punish rioters, and protect the honest citizen in his life and property, and in the wanton neglect of duty by the President in not furnishing, upon the application of the legislature, made on the 1st of August, even if he had been compelled to call out the militia of the several States, with sufficient force to preserve the peace. You ask me if I advised republicans not to go to the polls and vote. To this I reply that I had no authority whatever to act for the party; I was constantly engaged in my official duties, and left to the respective executive committees the conduct of the campaign. I was, however, consulted by the chairman of the republican State committee, who showed me a paper imploring the republicans to stand firm and go to the polls on the day of the election and vote. This circular I approved, acted upon the advice contained in it, and voted for Grant and Colfax, although I felt assured that the election would be throughout the State a farce or tragedy.

Such, indeed, was the fact, as the following figures are incontrovertible evidence. The election for the ratification of the constitution took place not quite six months prior to the presidential election. As you know, there were forty-eight parishes in the State, seven of which, De Soto, Lafayette, St. Landry, Vermillion, Franklin, Jackson, and Washington, gave 4,704 votes for the constitution, but did not cast a single vote for General Grant. Eight other parishes, to wit, Bienville, Bossier, Claiborne, Caddo, Morehouse, Union, St. Bernard, and Sabine, gave 5,520 votes for the constitution, but cast only 10 votes for General Grant. Twenty-one parishes, casting for the ratification of the new constitution 26,814, gave General Grant only 501 votes, and the whole State, polling for the constitution, in April, 61,152 votes, or a majority of 17,413, gave General Grant in November, only 34,859 votes.

It is impossible for me to give in the limits of a letter all of the facts in relation to the late election in this State. A committee should be appointed by Congress to investigate the whole affair, upon whose report should depend the count of this State in the electoral college and the admission of the representatives elect to seats in Congress.

In conclusion, I assert that the late election did not elicit the honest will of the people, and that the result was attained by the most shameless resort to murder, assassination, tumult, and intimidation, not to speak of proscription, that was ever known in this country, and that to allow it to go as the expressed will of the people would be an outrage upon republican institutions and ruinous to good government here for years to come.

Very respectfully,

H. C. WARMOTH,  
*Governor of Louisiana.*

Hon. WILLIAM P. KELLOGG,  
*United States Senate, Washington, D. C.*

---

B.

HEADQUARTERS STATE OF LOUISIANA,  
*New Orleans, January 20, 1869.*

DEAR SIR: In a printed letter of the date of December 10, 1868, addressed to you by Governor Warmoth, two passages relative to myself occur, which I cannot allow to go unnoticed without having my motives and conduct during the November elections entirely misconstrued.

The governor says that—

“At an interview between General Rousseau, General Buchanan, General Hatch, and myself, I became satisfied that the State had no friend in General Buchanan, and but little reliance was to be put in his active co-operation. He was severe in his criticisms, and seemed to sympathize with the hostility entertained by the enemies of the government to the Metropolitan Police department, and suggested as a necessity that the old



rebel force be restored. Our interview terminated without any satisfactory understanding."

The assertion that I was not a friend of the State would be cruel, if it were not well known to yourself, sir, to be absurd. No one is more fully aware than Governor Warmoth that to myself and the prompt measures taken by me on the day after the reassembling of the legislature at its last session was due, on that and several days following, the preservation of the lives of himself and all the prominent members of the republican party, in the legislature and of the new State government. Does he call this hostility to the State?

As to the criticisms referred to, he has forgotten to state that they were made by me as a soldier and not as a politician. A few days before the presidential election the legislature had created a metropolitan police board, with a view to the appointment of a police force to supersede the old force, under the control of the mayor of the city and the chief of police.

This appointment of the members of the new force created intense excitement throughout the city, and at the time referred to very seriously threatened its peace. The constitutionality of the law was questioned, and hence resistance to it was openly advocated. The members of the metropolitan force became utterly demoralized, the governor became alarmed, and when, at that interview, I was consulted as to my views, I expressed the opinion that, as a military man, the change of the force at that juncture was unwise and injudicious, as it was similar in its effect to changing the forces of a general at a moment when he expected to fight a battle; and I therefore thought it better to continue the old force on duty until after the election. I had used that force to keep the peace during the April elections, and the peace had been preserved. Its chief had been appointed by General Sheridan, and its members generally by Mayor Heath, himself an appointee of the same general; and hence the idea of calling it a disloyal force struck me as not only improper, but as absolutely at variance with probability.

All this was known to the governor, and yet he has thought proper to risk his reputation for veracity by so unnecessary and unwarranted an attack upon one whose authority he well knew to be subordinate to that of the department commander; and withal he finds himself compelled to assail, not my acts, but what he is pleased to call my motives; and this, too, in the very face of the acts themselves.

What were my acts? When called on for troops to protect the citizens of Gretna, I sent a company over at once. When informed that the ferry-boats were taking men over to that point to create a riot, I stopped the boats from running until they were released by higher authority. When informed that large parties from the city were about to proceed to St. Bernard in three steamboats, with a view of keeping up the war of races then going on in that parish, I sent a force down to the landing and prevented the movement. Was all this hostility to the State government? I hope not. It certainly was not so intended.

My fault, I think, consists in this: Congress has passed certain laws, and I have executed them, without consulting any one, exactly in accordance with what I believed to be their intent and meaning—as a soldier, and not as a politician. This I have done conscientiously, and this I shall do as long as I hold a commission.

The next passage in the governor's letter to which I refer is as follows:

"It was so small that General Buchanan stated in General Rousseau's presence that he (General Rousseau) would be as much justified in retiring with his troops as he would before an enemy of superior force."

This passage relates to the number of troops at the general's disposal in the city during the election excitement. The inference from it plainly is that General Rousseau told the governor of this alleged statement of mine. Unfortunately for the cause of truth, the lamented general has passed from among us; but I know what he would have said, and I therefore unhesitatingly deny that he ever made such a statement to Governor Warmoth, for the reason that it would not have been true.

Very respectfully,

ROBERT C. BUCHANAN,  
*Brevet Major General U. S. A., Commanding.*

Hon. W. P. KELLOGG,  
*United States Senate, Washington, D. C.*

C.

STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,  
*New Orleans, January 26, 1869.*

MY DEAR SIR: In the city papers I see a letter addressed to you by Brevet Major General R. C. Buchanan, in reply to mine of the 20th of December.

The general, as evidence of his friendship for the State, says that he sent troops



to Gretna "to protect the citizens," "and when informed that the ferry-boats were taking men over to that point to create a riot, I stopped them until released by higher authority." That "when informed that large parties from the city were about to proceed to St. Bernard in three steamboats, with a view of keeping up the war of races then going on in that parish, I sent a force to the landing and prevented the movement." He thus claims the credit of doing what I know General Rousseau ordered him to do. But giving him credit for these acts, how did he execute these orders? He stopped the boats and sent troops to the scenes of riot, and to what he is pleased to call a "war of races." But did he disperse the mobs? did he disarm the rioters? Or did he allow these bands of armed men to run riot throughout these localities, without firing a gun or attempting to disarm them? Did not the company he sent to Gretna stand with arms stacked and see the mob drive the detachment of police out of the town and across the river? The evidence is clear and incontrovertible, that over thirty negroes were killed in the parishes of Jefferson, Orleans, and St. Bernard, and there is not a single instance where one of these mobs were dispersed, or a man disarmed, or a gun fired by United States troops. As further evidence he says: "To the prompt measures taken by me on the day after the assembling of the legislature was due, on this and several days following, the preservation of the lives of himself (myself) and of the prominent members of the republican party in the legislature and of the State government." Is this true? Why, then, has he never revealed this information to the President and the General of the army? In my letter to the President of August 1, 1868, I wrote as follows:

"It has now transpired that the mob which threatened the legislature some weeks since was only prevented from re-enacting the scenes of the 30th July, 1866, by the presence of the United States troops. It was the deliberate intention of this secret organization to assassinate the lieutenant governor and speaker of the house of representatives for having decided questions preliminary to the organization of the general assembly in a manner obnoxious to them."

If General Buchanan had been the friend of the State, the questioning of which he denounces as "cruel, if it were not absurd," he would have supported my application, and that of the legislature to the President, for more troops with which to maintain the government of the State and enforce its authority, which at that time was openly resisted.

His carping and censorious criticisms were none the less severe and offensive, and gave quite as much encouragement to the leaders of the democratic mob, although "made as a soldier and not as a politician." He was nowhere constituted by law the censor of the civil government, or the administration of the new police, which, he says, was created "a few days before the election," but which, in fact, was created nearly four months before the election. He was here to use his troops to sustain the civil authority constituted as it was, and not as he desired it to be; the constitutionality of which he says "was questioned and resistance openly advocated," he failed to state, and openly made with shot-guns and Winchester rifles, which it was his duty to have suppressed.

He says that to call the police force which he had used during the April elections when the peace had been preserved, "disloyal, struck me as not only improper, but at absolute variance with probability; that the chief of police was appointed by General Sheridan, and its members generally by Mayor Heath, himself an appointee of the same general." I did not speak of the police force as "disloyal." I used the term "old rebel force," meaning the very men that constituted his police in April, most of whom—officers and men—appointed by John T. Monroe, were participants in the massacre of the 30th of July, 1866, and who, from some unaccountable reason, Mayor Heath retained.

He says again:

"My fault, I imagine, consists in this: Congress has passed certain laws, and I have executed them, without consulting any one, exactly in accordance with what I believed to be their intent and meaning, as a soldier, and not as a politician."

One thing is true: he never consulted with any republican as to the execution of the reconstruction acts. But if the history of his administration will not show that he was in daily communication with the enemies of the object and purpose of those laws, public opinion is sadly in fault, and should be set right.

I would not have given any attention to General Buchanan's letter, notwithstanding the many false positions assumed by him in it, were it not that he raised, in the following extract, a question of veracity with me:

"The next passage in the governor's letter to which I refer is as follows: 'It was so small that General Buchanan stated in General Rousseau's presence that he (General Rousseau) would be as much justified in retiring with his troops as he would before an enemy of superior force.' This passage relates to the number of troops at the general's disposal in the city during the election excitement. The inference from it plainly is, that General Rousseau told the governor of this alleged statement of mine. Unfortunately for the cause of truth, the lamented general has passed from among us, but I know what he would have said, and I therefore unhesitatingly deny that he ever



made such a statement to Governor Warmoth, for the simple reason that it would not have been true."

Fortunately for the cause of truth, all of the witnesses present on that occasion have not "passed from among us." The following telegram from General J. R. West, deputy United States marshal, and late of the United States Army, will tell its own story:

"WASHINGTON, D. C., January 23, 1869.

"To Governor H. C. WARMOTH:

"I have your telegram of to-day, inquiring whether General Buchanan stated in my presence and that of General Rousseau, during our troubles, or immediately preceding the election, that he (General Rousseau) would be as much justified in retiring with his troops as he would before an enemy of superior force. I reply that General Buchanan did address that precise language to me, and that General Rousseau was present. This occurred at an interview between Generals Rousseau and Buchanan and myself, about one week before the election, and subsequent to your having sought the intervention of the military authorities to preserve the peace. General Rousseau stated that his forces were so meager as to put it out of his power to suppress by force the prevailing outrages, and that if he came into collision with the populace, he could only expect to sustain himself, but would be unable to quell any outbreak of violence. To this view General Buchanan assented, and then made the remark about retiring, which you have quoted. Both of these officers manifested much anxiety about the critical position of affairs, and their expressions to me were to my mind at the time the conclusions at which they had arrived as to the best method of preserving the peace, and that the small number of troops at their disposal was such as to make coercion not only a doubtful, but fatal, proceeding. No person of cool judgment, knowing the facts, would at that time have dissented from their views. The conversation was caused by my visiting General Rousseau to inquire whether he had called upon the ex-Union soldiers then in the city to organize and co-operate with him. He said that he had not done so—that it would be folly to do it, and that he knew of no means of preserving the peace but through his personal influence with the citizens. To all of this General Buchanan assented, and I am satisfied that when the occasion is recalled to his mind he will remember his remark. On the evening of the same day I told you of the purport of the interview, and repeated the remark of General Rousseau, that he had but four hundred and fifty men, and General Buchanan's opinion that General Rousseau would be justified in retiring."  
"J. R. WEST."

Very respectfully, your obedient servant,

H. C. WARMOTH.

Hon. W. P. KELLOGG,  
*United States Senator, Washington, D. C.*

---

#### MINORITY REPORT.

Mr. Kerr submits the following as the views of the minority of the committee:

*In the cases of Simon Jones vs. James Mann, and Caleb S. Hunt vs. J. W. Menard, the undersigned members of the Committee of Elections ask leave to submit as a minority report:*

That, in respect to the case of Simon Jones, contestant, they fully concur in the conclusion of the majority of the committee that the claim of Simon Jones to the seat in contest has not been sustained; but in the conclusion of the majority in respect to the case of Hunt *vs.* Menard the undersigned cannot concur.

The conclusion of the majority in this case is substantially that neither Hunt nor Menard is entitled to the seat, because the election is invalid by reason of intimidation, fraud, and violence.

As the validity of the election upon any ground was not drawn in question by either of the parties to the contest between said Hunt and Menard, nor in any manner directly or indirectly in the proceedings before the committee submitted for consideration, nor allegation made, nor proof offered, nor argument submitted in respect to any supposed



invalidity, illegality, irregularity, or unfairness of the election, it is apparent that the majority has traveled out of the record in the consideration of the case; abandoned the rights of the parties; ignored the merits of the contest; disregarded the constitutional rights and the interests of the constituency; taken issue with the House on its recent emphatic recognition of the validity of the election in question, and rendered a verdict upon a matter not at all in controversy. The undersigned therefore do not concur in the conclusion of the majority, and proceed to present to the House their conclusions in respect to the contest between Mr. Hunt, contestant, and Mr. Menard, returned member, the history and facts of which will be briefly given.

By the death of James Mann a vacancy was caused in the representation of the second congressional district of Louisiana in the present fortieth Congress. The district comprised the First, Second, Third, Tenth, and Eleventh wards of the city of New Orleans, in the parish of Orleans, and the parishes of Jefferson, St. Charles, St. John the Baptist, St. James, Lafourche, and Terrebonne. The electors of the district were notified according to law to choose a representative to fill said vacancy, at the general election to be held November 3, 1868, for electors of President and Vice-President of the United States, and for representatives in the forty-first Congress. Such election was held accordingly, and Caleb S. Hunt and J. W. Menard were candidates and were voted for to fill said vacancy, and according to the returns of the votes made to the secretary of state, and filed of record in his office, the number of votes cast for said candidates respectively was as follows:

	Hunt.	Menard.
In the parish of Orleans .....	11,535	93
In the parish of Jefferson .....	2,224	662
In the parish of St. Charles .....	264	1,335
In the parish of St. John the Baptist.....	452	1,274
In the parish of St. James .....	770	2,160
In the parish of Lafourche .....	1,799	1,613
In the parish of Terrebonne.....	1,297	1,541
Total .....	18,341	8,678

Showing a majority for Hunt of 9,663 votes.

At the canvass of said votes by the board of State canvassers, the returns from the parishes of Orleans, Jefferson, St. John the Baptist, and Terrebonne were rejected from computation, and thereby the number of votes cast for Hunt was reduced from 18,341 to 2,833, and the number cast for Menard reduced from 8,678 to 5,108, and resulting in an apparent majority in the district of 2,275 for Menard; and thereupon, under date of November 25, 1868, he received a certificate of his election to fill the vacancy aforesaid.

On the 18th of December following Hunt presented to the House his protest against Menard being admitted to the seat, and giving notice of contest and grounds thereof, and claiming the seat for himself and filing the proofs of his title thereto; and said papers, together with the certificate of Menard, were, on motion, referred to the committee.

Such was the history and status of the case as it came before committee.

The allegations of contest set up by Mr. Hunt are substantially as follows:

1. That at the election held in the second congressional district of Louisiana, November 3, 1868, to choose a representative to fill the



vacancy in the fortieth Congress caused by the death of James Mann, he (Hunt) received 18,341 votes, and J. W. Menard received 8,678 votes, showing a majority for him (Hunt) of 9,663 votes.

To support this allegation Mr. Hunt filed in evidence an authenticated copy of the returns of said votes filed of record in the office of the secretary of state.

2. That the refusal of the board of State canvassers to compute the votes returned to the secretary of state from the parishes of Orleans, Jefferson, St. John the Baptist, and Terrebonne, was contrary to the laws of Louisiana; and the reasons assigned by the State canvassers for their refusal, to wit, insufficiency and informality in the execution of the returns, do not apply to the returns from the parish of Orleans, which were made and executed in all respects in conformity to law.

To support this allegation, Mr. Hunt filed in evidence the law of Louisiana concerning elections, and an authenticated copy of the certificate of the board of State canvassers as filed of record in the office of the secretary of state.

Mr. Menard neither answers nor denies the allegations or testimony submitted by Mr. Hunt, but objects to Mr. Hunt proceeding in his contest on the ground that he (Hunt) had failed to give him (Menard) the notice of contest prescribed by law.

To this objection Mr. Hunt answers, that the notice of contest which he laid before the House on the 18th December, 1868, (within the thirty days required by law,) was, at the time, known to him, (Menard,) he being present in the House at the time to present his credentials; that the grounds of contest were particularly set forth in said notice; that the contest was so limited in its range of inquiry and investigation as to require only testimony of record and construction of law; that such testimony was furnished along with the notice, and therefore Mr. Hunt submits that Mr. Menard had notice sufficient in all respects of time and particularity to put him upon his defense.

Since the passage of the act of 1851 regarding contested elections, the rulings and decisions of the Committee of Elections, sustained by the House, in respect to the construction and application of its provisions and the practice thereunder, have been most liberal in regard to the personal rights of contestants and the constitutional rights of constituencies, and the rights and powers of the House as involved more or less in every case of contested election. (See case of Wright *vs.* Fuller, Contested Elections, vol. 2, p. 154.) The committee says:

The intention of the law requiring this notice to be given was to prevent any surprise being practiced, and to put the sitting member upon a proper defense.

Also, case of Daily *vs.* Estabrook, vol. 2, p. 304, the committee says:

All the act of 1851 contemplates is fair notice of the subject-matter of contest within the time specified by the act itself; as the sitting member has had such notice, in the opinion of the committee, he has no ground for complaint.

Also, case of Williamson *vs.* Sickles, vol. 2, p. 290, the committee says:

The committee does not consider the law of 1851 as of absolute binding force upon this House, for by the Constitution "each house shall be the judge of the election, returns, and qualifications of its own members," and no previous house and senate can judge for them.

Again, same case, page 291:

But the constituency has a greater interest than all others in this question. The rights of the electors of the third congressional district of New York are involved in this controversy, and should not be compromised by any laches, if any exist, for which they are not responsible. It is of more consequence that their voice should have expression here through their lawfully elected representative, whoever he may be, than that this or that man should enjoy the emoluments or honors of the office.



Also, case of *Vallandigham vs. Campbell*, vol. 2, p. 230, the committee says:

Neither the committee nor the House is bound by the usual rules and principles of evidence, but should proceed upon more liberal principles in the investigation of truth. They regard a contested election not as a mere private litigation, but a great public inquiry, where the real parties are not so much the returned member and the contestant, as the voters of the district.

Also, case of *Chapman vs. Ferguson*, vol. 2, p. 230, the committee says:

The question to solve is not what these parties have done or omitted to do, but what was the express wish of the people of Nebraska as between these candidates at their late election.

And so in many other cases which it is not deemed necessary to cite.

In the judgment of the undersigned, in view of the facts in the premises and in the spirit of such rulings of the Committee of Elections, the notice given by Mr. Hunt as aforesaid was, for all the purposes of this contest and protection of the rights of Mr. Menard, legally and substantially sufficient.

Having thus disposed of the only preliminary question which arose in the consideration of the case, and indeed the only question submitted on the part of Mr. Menard, it only remains for the undersigned to say that, in their judgment, the contest on the part of Mr. Hunt has been fully sustained in view of both the law and the facts.

It has been shown that a vacancy occurred in the representation of the second congressional district of Louisiana. It has been shown that an election was ordered and held, according to law, to fill such vacancy. It has been shown that of the votes cast at said election Caleb S. Hunt received 18,341, and J. W. Menard received 8,678, being a majority of 9,663 votes for Hunt. It has been shown that, of the seven parishes composing the said second district, the returns made to the secretary of state of the votes cast in three, viz, parishes St. James, St. Charles, and Lafourche, were admitted by the board of State canvassers to be correctly made, and that in those parishes the votes cast were for Caleb S. Hunt 2,833, and for J. W. Menard 5,108. It has been shown that the votes cast in the other four parishes composing said second district, viz, parishes Orleans, St. John the Baptist, Terrebonne, and Jefferson, were rejected from computation by the board of State canvassers for alleged insufficiency and informality in the making or executing the returns thereof—that is to say, not having been made or executed by the persons designated by law to make the returns, or having been made or executed by a less number than required by law.

It has been shown the law of Louisiana required that the returns of the votes cast at the election in question in each parish should be made by the supervisors of registration of the parish to the secretary of state.

It has been shown, by admission of the board of State canvassers, that the returns of the votes cast in that part of the parish of Orleans comprised within the second congressional district were made by the supervisors of registration thereof, appointed under an act (No. 92) approved September 19, 1868, providing for additional supervisors of registration, whose duty and authority said board of State canvassers consider limited to registration, and extended to making returns of election.

It has been shown that by a subsequent act, (No. 164,) approved October 19, 1868, it is expressly made the duty of the supervisors of registration to make returns of election.

It has been shown that the votes so returned by the supervisors of registration in the parish of Orleans, as cast at the said election to fill said vacancy, were for Caleb S. Hunt 11,535, and for J. W. Menard 93.



Therefore, from what has thus been shown, in the judgment of the undersigned, the returns made of the votes cast in the parish of Orleans are in law and fact competent returns, and were improperly rejected from computation by the State canvassers, and that the said votes should be computed with the votes of the three parishes, viz., Lafourche, St. Charles, and St. James, which were computed as aforesaid.

If that be done, then the aggregate number of votes returned and computed from said parishes, viz., Lafourche, St. Charles, St. James, and Orleans, will be for Caleb S. Hunt 14,368, and for J. W. Menard 5,201—a majority for Hunt of 9,167 votes.

In view of such result, the undersigned deem it unnecessary to consider the objections made by the State canvassers in respect to the returns from the three remaining parishes, viz., Jefferson, St. John the Baptist, and Terrebonne; for if the votes from said parishes be computed the final result from the whole district would be but very slightly changed, and a large majority would still remain in favor of Mr. Hunt.

We also deem it entirely unnecessary to consider any question arising, or that may be supposed to arise, out of the change in the territorial extent and limits of the second district by the legislature after the election of Colonel Mann. No such question can, in any event, or upon any legal view of it, change the first conclusion to which we have arrived. The conclusive facts remain that there was a vacancy, and it was filled in accordance with the law of Louisiana.

In the judgment of the undersigned, based upon facts most satisfactorily proven, and upon the plainest construction of law, Caleb S. Hunt is shown to have been chosen by a large majority of the votes cast by the electors in the second congressional district of Louisiana at the election in question, to fill the vacancy in the fortieth Congress caused by the death of James Mann.

Since the first draught of the report of the majority was read to the committee, and since the foregoing part of the minority's views was prepared, our colleague, who reports for the majority, has added to his report a fuller statement of some points, which render proper the following additional statements by us.

The election held in the second district of Louisiana, at which each party to this contest claims to have been elected, was held under the law of ———, redistricting the State for congressional purposes, and the second district, under the latter law, had different territorial limits from the second district as it was constituted at the time Colonel Mann was elected. It is insisted by the majority that the election is therefore void; that it ought to have been ordered by the governor, and held in the old and not in the new district.

The authorities upon this point are not numerous, but it is believed that all that do exist are inconsistent with the conclusion of the majority. The only precedent in the records of Congress is the case of Perkins against Morrison, from New Hampshire, in the thirty-first Congress. In that case it was decided by the Committee of Elections, and approved by the House, that "the election was properly held in the towns denominated the third district under the latest law of the State." The reasoning of the majority of the committee in that case seems clear, forcible, and conclusive. The regulation of the districts is under the exclusive control of the States until, by act of Congress, it is taken from them. This jurisdiction has never yet been asserted by Congress. The State, therefore, had full power to create the new district. It did so, and then repealed all pre-existing laws on the subject. The vacancy could not have been filled by an election held otherwise than under the provisions



of the last law. It was therefore so held, in fact, and by order of the governor of the State.

But as we proceed to make it clear that if the entire vote cast in the election precincts now included in the second district which were not in the old district be rejected, it will not materially change the result, or in any just sense sustain the decision of the majority in this case. The decision of the majority amounts to a denial of representation. This ought never to be done where it is possible to avoid it.

It is argued by the majority of the committee that the electors of the second district who originally voted at the election of Mr. Mann, to serve during the fortieth Congress, could alone legally elect a successor to fill his vacancy for the same Congress, and therefore that the recent election, November 3, 1868, to fill such vacancy, was invalid by reason of the participation therein of the electors of the several parishes and the ward which had been added to the district since Mann's election. If this argument be sound, it can fairly and legally apply only in such cases where the legitimate vote cannot be separated nor sufficiently ascertainable from the illegitimate. It will not, in that view, apply to the case under consideration, for the electors who did vote at the election of Mr. Mann originally also voted at the recent election to fill his vacancy, and their vote can readily and quite satisfactorily be ascertained; and if it can be satisfactorily shown, then, upon the theory of the majority, that vote would constitute a valid election. We think that vote of the original second district at the election November 3, to fill the vacancy in question, is quite reliably and satisfactorily shown as follows:

When Mr. Mann was elected, the second congressional district was entirely within the parish of Orleans, and comprised the whole of the First, Second, and Third, one precinct of the Fourth, and the whole of the Tenth ward of the city of New Orleans. At the election November 3, to fill the vacancy, the portion of the second district within the parish of Orleans comprised the First, Second, Third, Tenth, and Eleventh wards of the city of New Orleans, the precinct of the Fourth ward having been, by the change of the district, taken from, and the Eleventh ward added to, the district. The votes returned from the parish of Orleans, at the recent election to fill the vacancy, were, therefore, cast by the electors of the original second congressional district, except those cast in the Eleventh ward, which had been added to the district since the election of Mr. Mann; and the whole number of votes so cast and returned from the parish of Orleans was 11,628—for Caleb S. Hunt, 11,535; for J. W. Menard, 93. If from these figures be taken, as should be, the number cast for each candidate by electors of the Eleventh ward, *the result would show exactly the vote of the original second district*, excepting the single precinct of the Fourth ward, which did not vote. It is not known precisely from any testimony before the committee what number of votes were cast for the candidates; respectively, in the Eleventh ward; but from an authentic copy of the registry record the number of electors registered in the Eleventh ward was 2,785. As the votes cast might have equaled, but could not have exceeded, the registry, it may be assumed that the number of votes cast in the Eleventh ward was 2,785; and if that number be deducted wholly from the 11,535 shown to have been cast for Mr. Hunt, he will then have received from the electors of Mann's original district 8,748, and a majority of 8,665 over Mr. Menard. In the single precinct of the Fourth ward, originally belonging to Mann's district, no vote to fill the vacancy was taken, in consequence of the precinct having been taken from the second district; but if a vote had been



taken in that precinct, the general result would have been affected but little either way, because, as shown by the late election, the entire vote of that precinct did not exceed 600; and if it be all taken from the vote given to Mr. Hunt, it only slightly reduces his majority.

In the case of Perkins again Morrison, the committee in reply to the argument based upon the assumption that certain constituencies might have two representatives at the same time if the election be held valid in the new district, say:

But the argument of the contestant is founded upon an erroneous view of the theory of constitutional representation. The extent of the trust is not measured by the number of those who were the agents in the selection of the representative. The Constitution uniformly speaks of the members of the House as representatives chosen by the people of the several States. No matter how or by whom elected, no matter how limited may be the elective franchise, each is the representative of the entire people of a State, and not the less so because only a part of the people participated immediately in his election. True, they are elected by districts, but the division of a State into districts is a regulation of the *manner* of the election, and not of the extent of representation. The district is a political division, formed solely for the purpose of election; it is a territorial division. While its limits remained fixed its inhabitants may change. That electors who voted in the second district in March, 1849, voted also in the third in October, 1849, is no unusual occurrence. Had the second districting act never been passed, the same might have happened by the removal of electors from one district to the other. In that case, as now, they would have voted for two members of the same Congress.

So it may occur, and often does, that an elector, after having voted in one State for a representative to this House, removes to another, acquires citizenship, and votes for a second representative in the same Congress. In the State of Virginia, freeholders in two congressional districts may vote upon the same day for a representative in each district. If this objection urged against receiving the votes given in the new precincts be valid, it is equally available against the reception of votes from electors who have changed their residence and those in Virginia who have already voted in one district. There is, however, no constitutional or legal provision which prohibits such voting, and your committee are not informed that even its propriety has ever been assailed. This has properly been left to the discretion of the people of the several States. It certainly should not influence the House while sitting as a judicial tribunal.—*Second Cont Elec. Cas.*, p. 145.

In this connection we invite attention to a certified copy of the official registry for the city of New Orleans and the parishes which now constitute parts of the second district, which is appended to this report.

We therefore recommend the adoption of the following resolution:

*Resolved*, That Caleb S. Hunt is entitled to a seat in this House as a representative of the second congressional district of Louisiana, in place of James Mann, deceased.

M. C. KERR.

JOHN W. CHANLER.

STATE OF LOUISIANA, OFFICE OF SECRETARY OF STATE,  
New Orleans, ———, 1868.

This is to certify that the following is a correct statement of the number of persons registered in the parishes below mentioned, under and by authority of an act of the legislature, approved September 7, 1868, as shown by the records of the board of registration of the State of Louisiana:

Orleans, ward one .....	.....
Orleans, ward two .....	4, 104
Orleans, ward three, front .....	2, 568
Orleans, ward three, rear .....	4, 449
Orleans, ward four .....	2, 876
Orleans, ward five .....	4, 462
Orleans, ward six .....	2, 808
Orleans, ward seven .....	3, 941
Orleans, ward eight .....	2, 618
Orleans, ward nine .....	2, 692



Orleans, ward ten .....	3,278
Orleans, ward eleven .....	2,785
Orleans, right bank .....	2,026
Jefferson .....	5,969
St. Charles .....	1,648
St. John Baptist .....	1,911
St. James .....	3,081
Terrebonne .....	3,279
Lafourche .....	3,570
Total amount .....	58,065
Deducting the Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth wards, and Orleans, right bank, showing the total registered vote of the second congressional district to be .....	36,642

Given under my hand and the seal of the State this the 9th day of December, in the year of our Lord 1868, and of the independence of the United States the ninety-third.

[SEAL.]

GEO. E. BOVEE,  
Secretary of State.

The books of registration of the First ward were so badly mutilated by some person on the night of the 1st November as to render them useless, and consequently they were not filed of record with the board of registration. The number of names registered up to that time was 3,130.

### THOMAS A. HAMILTON.

This claim for additional representation was not acted upon in the House.

February 18, 1869.—Mr. Shellabarger, from the Committee of Elections, made the following report:

*The Committee of Elections, to which was referred the certificate of Thomas A. Hamilton, as a representative from the State of Tennessee in the fortieth Congress, submits the following report:*

Under the existing law Tennessee has assigned to her eight representatives who now hold seats in the House. The claimant asks that he shall be admitted as an additional and ninth representative.

It is admitted that there is no act of Congress authorizing the election by Tennessee of more than the eight members now representing that State, or apportioning to the State nine representatives.

Your committee is unanimously of the opinion that, in the absence of such act of Congress, the claimant cannot be properly admitted. Upon this question your committee does not deem it necessary to submit any remarks, as it is not a question of any doubt, and the claimant is not understood to question the correctness of this conclusion of the committee.

This really disposes of everything properly before the committee by the order of the House. The only matter referred was whether the claimant ought to be admitted to a seat as a representative from Tennessee. The decision of the committee, which is above stated, fully disposes of that.

But as the claimant insists that an act of Congress ought to be now passed apportioning an additional representative to his State in the fortieth Congress, and that he shall be admitted under it, and as he asks that the Congress shall proceed to enact such a law, omitting to give increased representation to any other State, your committee has consented to consider the propriety of now enacting such a law. Upon



this last matter your committee is not agreed, and the majority submits the following considerations against the enactment of such a law :

#### GROUND OF MR. HAMILTON'S CLAIM.

Mr. Hamilton rests his claim to a seat, and his demand that a law shall be passed, upon substantially the following facts and considerations :

That in 1865 the people of Tennessee voluntarily emancipated their slaves, and thereby added two-fifths of these, being by the census of 1860 110,287, to the representative population of that State and making the entire representative population of the State now 1,009,801, assuming that it is the same as shown by that census ; that this entitles the State to nine representatives, retaining the same ratio of representation (127,000) as that upon which the apportionment was made in 1861.

It is urged that this being done when it was, and voluntarily by act of the people, and being accompanied by enfranchisement of the colored race, distinguishes the claim of Tennessee for the representation of her freed people from the States where the enfranchisement was subsequent and the result of federal coercion. It is also claimed that the second article of the fourteenth amendment, making the rights of representation to be in proportion to the numbers of the voting races, sustains this claim. It is further urged that the refusal of it would dishearten the freedmen of Tennessee, who are alleged to regard the claimant as especially their representative, and would be disastrous to their interests as a race, now in especial need of the recognition and protection of their government.

Upon substantially these considerations, as is alleged, the general assembly of Tennessee, on the 12th of March, 1868, adopted a joint resolution requiring the governor "to issue a writ of election, *to the State at large*, for the purpose of electing one additional member to the Congress;" and the claimant presents the certificate of the governor showing that on the first Tuesday of November, 1868, the claimant was elected by the people of the State at large a representative of the State of Tennessee in the fortieth Congress.

While your committee recognizes the rights and the present especial necessities of all the loyal people of Tennessee to the recognition and protection of the government, and would deeply regret such consequences as have been pressed upon the attention of the committee as likely to come from declining to admit the claimant to a seat, yet the committee feels confident that there is no portion of the people of Tennessee whose intelligence and patriotism will not lead them to approve any determination to which this House or the Congress may come in this case, provided it is one required by the Constitution, and by the rules of justice and equality which these require in apportioning representatives among the several States.

The freed citizens of Tennessee will, like those of the other States, have the discernment to see and the wisdom to accept the fact that their happiness and safety, in so far as these can at all be derived from the protection of their government, must be found in adhering to these evident and controlling principles of that government. If, therefore, the conclusions to which your committee has come are plainly right, and such as are required either by the provisions of the Constitution itself, or by a fair regard to *equality* in the apportionment "among the several States" of the powers and rights of representation in this House, then those conclusions will be sustained by every part of the people, and by



noue more fully than by those alleged to have the deepest interest in the determinations to which the House and Congress shall come in this case.

#### WHAT THE QUESTION IS NOT.

It must be carefully noted and kept in mind, in deciding the questions referred by the House to the committee, and in considering the reasons here submitted for the conclusions which your committee has reached, that what is referred to the committee is not whether there should be now apportioned to all of the several States, including Tennessee, whose representative populations have been augmented by the abolition of slavery, such increased representation as that increase of federal population may entitle them to respectively. That question has not been considered by the committee, and no recommendation whatever is made in regard to it.

#### WHAT THE QUESTION IS.

The single question referred by the House and considered by the committee is, whether there is that in the claim of Tennessee to this increased representation which distinguishes it from the similar rights of the other States, and which makes it competent or right to apportion this increased representation to Tennessee alone, without, *at the same time*, according it to the other States whose representative "numbers" have been similarly augmented. This question your committee has carefully considered, and upon this only it submits the conclusions to which a majority of the committee has come.

#### CONSTITUTIONAL RULE OF APPORTIONMENT.

The rule by which the committee has been controlled, in arriving at the conclusions it has reached, is one furnished by the Constitution itself, in that provision which requires that—

Representation and direct taxes shall be apportioned among the several States which may be included within the Union according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative.

This provision of the Constitution is one not only furnishing the *principle* but also the *manner* of every apportionment of representation. The "manner" of making the enumeration *is*, in express terms, confided to the Congress, but the "manner" of making the apportionment is not. As to the manner of the latter the Constitution not only furnishes the general principle but the details also. As to the controlling substance of this supremely important and vital act of sovereignty which partitions to the people and the States their due proportions of the national sovereignty, the Constitution has withheld from Congress all discretions, and has fixed, with mathematical precision, the unchanging law. We say "controlling substance," because, in the very nature of the subject-matter provided for in the clause under consideration, it was impossible that the Constitution should furnish a law to Congress as to two elements which must enter into the making of every apportionment; and it must leave to Congress powers and discretions as to these. These are, first, the fixing of the whole number of members in the House; and



second, the just disposal of the fractions of representative populations, which are inevitable in apportioning representatives to the several States. As to these two, Congress has powers and discretions, and has always exercised them; as to everything else in this matter of apportionment, Congress has none, and has, as the committee thinks, never exercised any.

What, then, is the legislation of the Constitution upon this subject, and what the rule by which it has bound the powers and discretions of this House and of the Congress? These are plain, unambiguous, and complete. Those requirements of this rule which are material to be here considered are—

1st. That the apportionment must be made to each of the several States. The Congress, by other provisions of the Constitution, has the power to determine when a Territory or people are such in numbers, or in organization, or in attachment to the government of the United States, as to be fit or entitled to be admitted as one of "the several States included in the Union." But being so admitted and recognized by Congress as such State, the Congress has no discretion as to the apportionment to such State of representation, but must accord representation to *each* State so admitted and recognized by Congress.

2d. This apportionment must be based on the "numbers" of the federal populations. Whether it should be based on numbers only, and if so, who should be counted in the enumeration, was a matter of the most profound concern in the convention which framed the Constitution, and one which came near defeating its formation. It was only after such a struggle as this that "numbers" was adopted as the basis of representation, and its importance, and the duty of having strict regard to it, is indicated by the history of its adoption.

3d. In making the apportionment on this basis of "numbers," there must be apportioned to *each one* of the several States that proportion or part of the aggregate membership of the House of Representatives which that State has of the aggregate representative population of the United States.

4th. The enumeration upon which the apportionment is based must be the one required to be taken within every term of ten years in such manner as the Congress shall by law direct.

#### APPLICATION OF THE CONSTITUTIONAL RULE.

Having regard, then, to these controlling requirements of the Constitution, the majority of your committee finds it difficult to discover any authority by which Congress shall assign to one of the several States an increase of representation on account of its increased numbers of representative population, and yet withhold it from *other* States shown to the *same Congress, at the same time, and by the same known and historic events*, to have had a similar or greater increase of federal numbers. Indeed, this would be so plainly a disregard of the evident requirements of the Constitution and of the rules of equality of representation secured by it to the several States, that it need not be considered by the committee; and so plain that this was not, in terms, demanded by the claimant or by the representative from Tennessee before the committee. And hence it is that the claim of Tennessee, in this case, is vindicated and pressed upon the favor of the House upon the ground, mainly, that the claim of Tennessee is *distinguishable* from what could be demanded by the other late slave States. This distinction is rested, as we have already stated, upon the alleged fact that in 1865, during the recent rebellion, and in aid of



its suppression, the slaves of that State were, by the voluntary act of the people, emancipated, enfranchised, and added to the representative numbers within such State; while in all the other States the emancipation and enfranchisement and addition to federal population was, on the part of the people, involuntary, and by the coercions of the war. Something is also claimed by Tennessee in virtue of the fourteenth constitutional amendment, as we have above stated.

#### THE FOURTEENTH AMENDMENT.

In regard to this last claim, based upon the second section of the fourteenth amendment, it is sufficient for the purposes of the present inquiry to say that it can have no possible effect upon the conclusions reached in this case unless it be the effect of leading to a reapportionment of representatives to each of the several States in the Union. The effect of that section is to reduce the representative population in any State where part of its male citizens, being twenty-one years of age, are disfranchised. This reduction is in the proportion which this disfranchised part bears to the whole number of male citizens, twenty-one years of age, in such State. The enfranchisement in Tennessee could not, by virtue of this section, increase her federal population above her *entire* population; and that *entire* population the committee, in its considerations, have accorded to her. The only way by which Tennessee can gain representative power under this section is relatively, and by reducing the representative population in such States as now disfranchise part of their male citizens twenty-one years of age, in the proportion as stated in that second section, and by that reduction of the other States, augmenting the relative representative power of Tennessee. But it will be seen that the same thing which increases Tennessee's relative power in the House would likewise increase that of each of the reconstructed States, where there are now no disfranchised males. In five of these, namely, Alabama, Georgia, Louisiana, North Carolina, and South Carolina, the increase of representation would be far more than in Tennessee. The States which would lose representation now by virtue of this section of the amendment are, of course, the States where the adult male population is disfranchised in whole or part, and which is in nearly all of what are popularly denominated the loyal States. It is plain, then, that any apportionment of increased representation to Tennessee, in virtue of the fourteenth amendment, must be made upon a principle which will equally entitle each of the other reconstructed States to a like increase, and that it must deprive the loyal States of part of their present representation, and must involve a reapportionment of representation to all the States, or else require a disregard of the provisions of the very section upon which Tennessee bases this point in support of her claim. Your committee could not doubt that such a fragmentary and palpably unjust enforcement of this section in behalf of a single State, necessarily involving the reduction and withholding of the just rights of others, ought not to be, if it could be, now entered upon. But it is simply impossible that it could be. No census has ever been taken which shows what proportion the disfranchised males twenty one years old bears to those enfranchised in any State, nor is there anything in any census which furnishes even an approximate. It is, therefore, even if this amendment could be resorted to now as furnishing a rule of apportionment, exactly impossible to make any apportionment which shall be at all controlled or affected by the fourteenth amendment.



## WHAT DISTINGUISHES TENNESSEE'S CLAIM.

We therefore dismiss from our consideration the fourteenth amendment, and we are brought to consider the claim that the voluntary emancipation of the slaves of Tennessee during the war, by act of her people, in organizing a new State government, entitles that State to representation for these emancipated people which the emancipated of the other States are not entitled to, because theirs was not voluntary, was long after the emancipation in Tennessee, and was the result of the coercions of war and federal interference. If your committee should accept this statement of a historical event as an accurate one, it seems to your committee impossible from it to reach a conclusion which will sustain the demand of the claimant. He insists that the right to increased representation is one which accrued, in an especial sense, to the emancipated race as an unrepresented race in Tennessee; and that its denial would be a wrong to *them*, and disastrous as a denial of *their* federal powers, as distinguished from the other people of the State. It is not claimed that by reason of their longer freedom they are more fit for the exercise of federal powers than are the freed of other States. If this be a view the committee is at liberty to consider, under the controlling obligations of the Constitution, how can it be that these same rights of representation which have accrued, in this especial sense, to the freed people of Tennessee have not also accrued to the freed people of the other late slave States now represented in this House? Of the latter class there are 2,564,530—equal to twenty representatives, upon the ratio upon which this House was elected. In Tennessee there are but 275,719—equal to two representatives. Is the magnitude of these twenty representative populations so small that it may be ignored as we are compelled to ignore mere fractions? And is the magnitude of these *two* in Tennessee so great that the two must be recognized by an act of partial apportionment which, by necessity, ignores the twenty? Or are they to be ignored because they were two years longer deprived, by the wrong of the master race, of the rights which this point in claimant's case asserts belong to *them* peculiarly, as distinguished from this master race? Was it the wrong of the injured race in the other States that they were not *voluntarily* emancipated in 1865 by their owners? Shall Congress add to the greater wrong of their two years longer enslavement the other one of depriving them, for other years, of *their* rights of representation which that same Congress accords to their less injured fellow-freedmen in Tennessee as a right due to them peculiarly? Or do the freedmen in Georgia, or Louisiana, or Kentucky even, less need the encouragement, safety, and protection which come from having their peculiar representation than they of Tennessee do?

Surely, if this increased representation be indeed a right which has accrued peculiarly to the race which was added in Tennessee to her representative population, as is insisted, and one needed for their encouragement and safety, then it is one which accrued also to them of the same race who were added in the other States and who are equally in need. That their rights came to them more slow or in the devastations of war cannot abate the magnitude of *their* rights or the high obligations of *our* duty.

But suppose this be a mistaken view, and that this claim of Tennessee to be advanced in representation is not to be rested upon the doctrine which was urged upon the committee that the right was one accruing to the emancipated; and suppose it to be alleged that it *was* one which came to all the people of Tennessee, and that it accrued to them alone



and not to the people of the other States, because they alone *voluntarily* emancipated their slaves. Is this position one which can be sustained by this House? The courage, patriotism, and endurance which the loyal people of Tennessee, as of the other States involved in the fires of war, brought to their country's aid in that war, secured to them the gratitude of their imperiled country, attracted the admiration of the world, and received in Tennessee, first of all, their government's highest consideration and reward in its *first* restoration to the powers and rights of a governing State in the Union. The intelligence of that State cannot fail to know, after events like these, how the republic recognizes and rewards the claims of patriotism and loyalty. But a recognition of these which does violence to the best principles of the government which secured to all the States equality in the powers and protections of the government, is one alike unworthy of the deeds on behalf of which the recognition is claimed, and dangerous to the interests of all the people.

Can this action of Tennessee, then, in first freeing her slaves, be recognized and rewarded by assigning to her rights of representation for her emancipated which is denied to other States having millions more of the emancipated added to their number? In all alike they are *now* citizens. In all alike of the reconstructed States they are *now* voters. In all alike they need the encouragement and protection of their government. In all alike, whatever protection would come from increased representation, would come to their loyal people. In all alike the last census has furnished us an approximate idea, but no more of the number which emancipation has added to their representative "numbers." In all alike the people are entitled to the benefits of their country's Constitution, prescribing that their respective representations shall be according to their respective "numbers," and not according to the ideas of Congress of their respective merits or virtues. In all alike the Congress has recognized, as to-day existing, State governments and a people entitled to the powers of government in the Union. In each of them every department of the government has recognized the freedmen, and all other citizens, as *equally* free, *equally* citizens, *equal* in the obligations of their allegiance, equal in their duty to contribute to the common burdens and in the governing power of their ballot. And each alike would gladly receive such increase of representation in this House as their numbers entitled them to. There is, there can be, no distinction, then, in the "respective" rights of these States to increased representation in the proportions of the additions by emancipation to their representative numbers, unless it is to be found in distinctions between the respective *virtues* of their people. Can Congress apportion representation on the congressional measurements of *that*? Your committee wholly failed to reach that conclusion of fact upon which this distinction in favor of Tennessee is based, namely, that the loyal people of Tennessee (great as that loyalty and their patriotic deeds are by the committee fully recognized to have been) were enabled to or did wrest from the slaveholders of that State their slaves and enfranchise them *unaided* by those same forces of war which are alleged to have worked emancipation in the other States. Your committee is inclined to conclude that that event, (the abolishment of slavery,) the most stupendous, as it is the most beneficent one in the republic's annals, or indeed in modern history, was, in *all* the States, *one* event—one in its origin, its progress, and consummation.

Its origin, in so far as it is found in mere human agencies or purposes, was in the purpose of all the loyal people to preserve the Union—to preserve it, as the commander of their armies said, "*with* slavery if



they could, *without* slavery if they must." The steps which mark the progress of that abolishment are the same which make the epochs in the nation's execution of that purpose to save this Union. These epochs are not to be found alone in the proclamation of 22d September, or in the adoption of the free constitution of Tennessee, or the enfranchisement of the slaves in this District, or even in the enactment by the people of the thirteenth amendment. These were each rather consequences than causes. The events which occurred at Fort Nelson, and Stone River, and Missionary Ridge, and Lookout Mountain, and other kindred events in and around Tennessee, probably had much more influence in persuading the slaveholders of Tennessee, and that part of the white people who sustained their cause against emancipation, and who, together, made up the great body of the white people of the State, to submit to emancipation, than had the adoption of the free constitution of 1865. Indeed, the majority of your committee are of opinion that but for these events and their influences there would be, to-day, not only no free constitution of Tennessee, but no Tennessee, nor House of Representatives of the United States. In the light of such history as this it seems difficult to conclude that the virtues and patriotism of the aggregate *white* population of Tennessee, made up in its great controlling mass of those engaged in relentless effort to overthrow the government and in resistance of emancipation, were such as now to demand for them an augmentation of representative power in Congress above the representation of the other States. We say the "aggregate *white* population" because, as we have already said, there can be no discriminations made in this case based on any differences in the loyalty or the rights to representation of the colored populations of the several States. If, therefore, discriminations could be made in apportioning representation to any one of the late slave States on account of the acts of patriotism or of loyalty of its people, it must be upon those of its *white* population.

But, really, these suggestions seem to your committee to relate to things which it is so plain can in no view be considered in apportioning representatives to the "several States according to their respective numbers," that your committee would have made none of them, but for the earnestness with which it has been insisted upon before the committee, in oral and printed arguments, that they ought to be considered; and that Tennessee is to be *distinguished*, in apportionment, from the other States because "emancipation in Tennessee was the voluntary act of her own loyal people, and not the result of congressional legislation"—was by "the formal abolition of slavery by popular vote on the 22d of February, 1865"—was entirely the spontaneous action of her loyal people; and that "for these acts \* \* \* they are entitled to additional representation." (See first page of printed argument.)

#### ASSUME EMANCIPATED EQUALLY ENTITLED TO REPRESENTATION.

If the position taken before the committee by the claimant, that the claim of Tennessee was *distinguishable* from what could be claimed for their emancipated by the other reconstructed States, and should it be urged that this bill should be passed providing for Tennessee alone, because she alone and first claims the increased representation, and that the others can be provided for when they, like Tennessee, ask to be, then the answer to this is plain, and the same already urged. The apportionment to each and every State of their respective proportions of the membership is an act which, by the very nature of the case, as well



as by the theory, the terms of, and the practice under, the Constitution, *precedes* and *authorizes* the elections in the States. In making an apportionment based upon a ground which would equally entitle many of the States to large and controlling additions to their respective representations, we ought not to assign such additions to the representation to only one of them, and as a justification say that it will be time enough to assign it to the residue when they shall, like the one provided for, elect additional representatives, in direct violation of our existing laws. If the abolishment of slavery be a *good* ground for making a new apportionment, and if it be equally good as in favor of every one of the reconstructed States, (as the position now considered assumes,) then it is as good as any other sufficient ground for such apportionment. Grounds *sufficient* are, in law, equally sufficient. Therefore, if it be right to apportion additional representatives, on the grounds of the abolition of slavery, to only part of the States thereby entitled thereto, and to give it to the residue when they ask for it, then it would be just as proper to do the same thing in making an apportionment based upon the ground that the new and regular decennial census had been taken, and it would be right in Congress after the next census to give to such States as had claimed and elected, under the new census the membership which that entitled them to, and to leave the other States, with their old representation, or with none at all, until they chose to elect members under the new census without, and in violation of, the authority of existing law; and that it would be time enough for Congress to execute the imperative command of the Constitution, and apportion to "*the several States*" representatives according to "*their respective numbers,*" when the States had elected their members and asked for their rights.

#### PRACTICE IN MAKING APPORTIONMENTS.

It is further insisted that the congressional practice in making apportionment supports the claim of the applicant. It does not so appear to your committee. In the first place there is, as there can be, no precedent for the claim now before the House, because no such event, either in nature or magnitude, ever before occurred since the formation of the Constitution as that one is upon which the claimant's right to a seat, by necessity, must be based. By that event, if the census of 1860 is to be our guide, as the claimant insists it shall be, 3,950,431 of the people of the republic were changed from being slaves to citizens, and by that change 1,580,212 "persons" were added to the representative population of the republic. This event has such magnitude as that, if an apportionment is to be now made based on *it*, that apportionment will reduce the aggregate representation from the free States from one hundred and fifty-six, as it now is, to one hundred and forty-seven members, thus depriving them of nine members of the House—this by adhering to the ratio of representation upon which the membership of this House is elected, namely, 127,000; and it will increase the aggregate representation from the late slave States from eighty-five to ninety-four members. It is, of course, not only impossible to find a precedent in former legislation for a case like this, but it is equally impossible to resist the conclusion that if this addition to the representative population of the States is to be recognized as entitling one State to increased representation *now*, then the magnitude of the accession to the federal population is so great as to compel a reapportionment of the entire representation in the House if any respect is to be paid to the rule that representatives are to be apportioned to each State according to "*numbers.*" In dealing with



*this* addition to representative population the Congress is not dealing with mere fractions of a representative population, but with a population entitled to elect more than one-twentieth part of the entire membership of this House. In dealing with such a large and often controlling proportion of the vote of this House, it cannot be that the Constitution permits Congress to exercise any discretions such as must be by necessity exercised in disposing of a mere fraction of a representative population in a State. And this is in accordance with all legislative precedents upon this subject. These precedents involve and sustain the following propositions, namely :

1. That "the Constitution evidently contemplated a census *only once* in ten years, and consequently a new apportionment, based upon such census, *only once in ten years.*" (See Low's case, 1862, Contested Elections, 421, approved by the House without division.)

2. "The census and apportionment thus connected together in the Constitution, have been connected together in all subsequent legislation of Congress." (See same case, page 419.)

3. "There can be no such thing as one State represented according to one apportionment and under one census, and another State according to some other apportionment based on another census. The whole number of representatives and the number for each State are both fixed by law, and by the same law. There cannot be one law for one State and another law for another." (See same case, page 423.)

4. All former special acts of apportionment have been passed, at least professedly, to supplement the acts of general apportionment and to complete the equality of that apportionment to and among each and every one of the several States; and no act was ever passed which contemplated or recognized any other State as being left without its just proportion of representation as contrasted with what was accorded, by the special and the general law, to every other State. On the other hand the proposed act in favor of Tennessee does propose to accord to Tennessee *alone* increase of representation upon a principle and on behalf of a population which would equally entitle other States to a like or greater increase, and yet it denies the increase to the other States.

#### THE SPECIAL ACTS OF APPORTIONMENT.

The apportionment of representatives to all the States which was made under the seventh census of 1850, and also under the eighth census of 1860, was made by the Secretary of the Interior, according to the requirements of the 24th and 25th sections of the act of 23d of May, 1850, (1 Brightly's Digest, page 120.) The first of these sections fixes the whole membership of the House, after 3d of March, 1853, at 233. The other section requires the entire representative population of all the States, as shown by the last census, to be divided by the number 233, and that he shall then take the product (or quotient) of this division—rejecting any fraction of a unit—and divide it into the representative population of each State, as shown by the same census, and the product of this division, as to each State, gives the number of representatives for that State. It then requires the Secretary to add to the representation of "so many of the States," having left the largest fractions in dividing their respective populations by 233, one representative for each fraction as will bring the whole number up to 233. Every Congress elected since 3d of March, 1853, was elected on apportionments thus made by the Secretary, except that on the 4th March, 1862, (2 Brightly, 84,) Congress changed the aggregate membership of the



House to 241, and gave the additional members thus made to the States of Ohio, Pennsylvania, Kentucky, Illinois, Iowa, Minnesota, Vermont, and Rhode Island. This was done, as the debates show, in order to make these States more nearly equal to each and all of the other States, by allowing them a representative for large fractions of representation which they severally had unrepresented as shown by the census of 1860.

The act of June 2, 1862, (2 Brightly, 84,) gives California an additional representative, but the act gives the reason for this in these words:

As the census has never been reliably taken in California until the year 1860; and as it appears said State had sufficient population to entitle her to three representatives in the thirty-seventh Congress, and three representatives have been elected to the thirty-seventh Congress, under the supposition that the said State was entitled to the same, as appears by the certificate of the governor; and as direct taxes have been apportioned to and paid by said State under the census of 1860; therefore the said State shall be allowed three representatives in the thirty-seventh Congress, and for that purpose the whole number of representatives is increased one until the beginning of the thirty-eighth Congress.

The act of July 14, 1862, (2 Brightly, 84,) requires that "each State entitled to more than one representative shall thereafter elect the number the State is entitled to *by districts* composed of contiguous territory, equal in number to the number of representatives to which said State may be entitled," but this act not to apply to California's election to the thirty-eighth Congress; and Illinois was authorized to elect the additional member given her by the above-named act of March 4, 1862, for the thirty-eighth Congress, by the State at large. These are the only acts of special apportionment brought to the attention of the committee, and it is believed that none more favorable, as precedents for the legislation now asked by Tennessee, than these are, can be found in our legislative history.

It will be seen that each of them, instead of being a precedent for allowing a State increased representation upon a claim which applied with equal force in favor of other States, and which other States the special act left unprovided for, are cases where the act assumed that all the other States were already more fully represented than the States provided for in the special act, and that such act was required to complete the equality of representation as between each one and all of the several States.

Of course, the numerous acts admitting new States, and giving them the representation their "numbers" entitle them to, are in no sense analogous to this proposed bill, because these acts did not leave any other States not equally represented with the new State. What is deemed by the committee the fatal objection to the proposed bill is that it gives Tennessee an additional member on the ground of the addition of 110,287 to her representative numbers by the abolition of slavery, while it passes by, neglects and refuses to give, and thereby denies, additional members to the other States now represented in this House, who have added nearly ten times that number to their numbers by the very same event and fact which added them in Tennessee. It cannot be successfully claimed that acts admitting new States and giving them their due representation, when *every other State was fully represented*, and represented *equally* with the newly admitted State, can furnish the slightest authority, or a precedent, for such a wrong as this one done by the proposed bill.

#### ELECTION OF REPRESENTATIVES BY SINGLE DISTRICTS.

The act of 14th July, 1862, cited above, it will be seen, required that the *whole* representation from each State shall be elected by districts com-



posed of contiguous territory. This act is one expressly authorized by that clause of the Constitution empowering Congress to "make and alter" the regulations of the States as to the "manner" of electing representatives. If Tennessee was, in 1868, entitled to elect *nine* representatives, as she claims, then her legislature, in providing for their election, was bound by the obligations of the Constitution, and of this act of Congress made in pursuance thereof, to observe the requirements of this section, which commands that "the number to which such State is or may be hereafter entitled shall be elected by districts composed of contiguous territory, equal in number to the number of representatives to which such State may be entitled in the Congress for which such election is held." Instead of obeying this, to them a supreme law, that legislature disregarded it, and by joint resolution ordered that one of her (claimed) nine members should be elected by all the people of the State. This election, then, of a representative, even if the State were entitled to nine members, was one ordered to be held in a "manner" in palpable violation of the law. Your committee does not refer to this disregard of the act of Congress, and of the provision of the Constitution upon which the act is based, for the purpose of saying that it is beyond the power of Congress, by legislation, to legalize a past election held in plain and flagrant defiance of the laws of Congress, but it does refer to it as establishing, if approved by Congress, a most dangerous precedent affecting the very existence of the government and the sources of its authority. It becomes an invitation to every State which may deem herself inadequately represented to send here such increased membership as she may claim, not only in the absence of any authority of Congress for additional representation, but to do so in a "manner" which involves a plain disregard of the acts of Congress. Besides this, it is plain that an election so held for an officer whose very existence is negatived by the existing laws of the government, and held in a manner in direct conflict with the requirements of existing law, is an election at which it ought to be presumed by Congress many of the electors would fail to participate, and that it would be apt to be one not showing safely the choice of all the electors. Your committee is of opinion that if any legislative precedent now exists, sanctioning such disregard by the States of the laws of the government regulating the "manner" of creating the law-making power of that government, yet this is, pre-eminently, not the time to add to the precedents which sanction disobedience to just federal authority by the States; and even if it were wise to add another such precedent, if any such there be, your committee does not think the character of this case is such as to make it wise to make it one of them.

In making these suggestions touching the action of Tennessee in this case, your committee by no means designs to attribute either to the people or to the authorities of Tennessee, in this whole matter, any other than the most patriotic motives; and your committee has only designed, in commenting upon the requirements of the act of Congress requiring elections by single districts, to secure attention to the future mischiefs which are likely to arise from a disregard of the provisions of the law and Constitution regulating the "manner" of electing representatives.

Your committee recommends the adoption of the following resolution:

*Resolved*, That Thomas A. Hamilton is not entitled to a seat as a representative from the State of Tennessee.



MINORITY REPORT.

The undersigned, while concurring in the conclusions of the committee that under existing statutes the claimant is not entitled to a seat, nevertheless deem it their duty to urge upon the House such legislation as will meet the case, and upon that point submit the following views:

The Constitution, article I, section 2, provides that "representatives \* \* \* shall be apportioned among the several States which may be included within the Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons \* \* \* three-fifths of all other persons." A decennial census is provided for, and the number of representatives limited "not to exceed one for every 30,000, but each State should have at least one." Beyond this the apportionment of representation among the several States devolves upon Congress to regulate by legislation.

ACTION OF CONGRESS—PRECEDENTS.

Until a census could be taken and an apportionment made accordingly, the number of representatives in the House was fixed at sixty-five. By the first general apportionment act, April 14, 1792, ch. 23, the number was increased to one hundred and five, and the ratio of 33,000 adopted. The second, January 14, 1802, ch. 1, retained the ratio of 33,000, and increased the number still further to one hundred and forty-one. The third, December 21, 1811, ch. 9, fixed the ratio at 35,000, and the number of representatives at one hundred and eighty-one. The fourth, March 7, 1822, ch. 10, increased the ratio to 40,000, and the number of representatives to two hundred and twelve. The fifth, May 22, 1832, ch. 91, advanced the ratio to 47,700, and the number of representatives to two hundred and forty. The sixth, June 25, 1842, ch. 47, established the ratio at 70,680 and incorporated the novel principle of one additional representative for each State having a fraction greater than one moiety of the said ratio. This reduced the number of representatives to two hundred and twenty-three. Each of these acts followed the taking of the census and was based upon the results, and, though in terms of unlimited duration, was manifestly intended to continue in force but for ten years, until after the next succeeding census.

The difficulty of this legislation had been found so great that it produced the act of May 23, 1850, ch. 11, for the taking of the seventh census. This act fixed the number of representatives at two hundred and thirty-three, to be apportioned among the several States by the Secretary of the Interior, according to their respective populations as ascertained by the census, and was obviously designed to be permanent. Sections 25 and 26 of the act prescribe the method of apportionment, and after the taken of the seventh census in 1850 the representatives were so apportioned. These, it is believed, are all the general laws upon this subject, extending in their operation to all parts of the country, and ascertaining the numerical character of the House.

From time to time special acts have been passed to meet the exigencies of particular cases, at the discretion of Congress. The act of February 25, 1791, ch. 9, gave two representatives each to Kentucky and Vermont, until there should be "an actual enumeration of the inhabitants of the United States." By the act of June 1, 1796, ch. 47, Tennessee was admitted to the Union, with one representative "until the next general census." The act of April 30, 1802, ch. 40, enabled Ohio to form a State and gives her one representative "until the next general census."



The act of April 8, 1812, ch. 50, admitting Louisiana, gives her one representative "until the next general census." The act of April 19, 1816, ch. 57, enables Indiana to form a State government, and until the next general census entitles her to one representative. She was admitted to the Union by joint resolution December 11, 1816. A similar act was passed for Mississippi, March 1, 1817, ch. 33, and a similar joint resolution December 10, 1817; also for Illinois, April 18, 1818, ch. 67, and December 3, 1818; and for Alabama, March 2, 1819, ch. 47, and December 14, 1819.

The act of April 7, 1820, ch. 39, reduced the number of representatives in the 17th Congress from the State of Massachusetts to 13, and gave the remaining seven to the recently formed State of Maine.

The general apportionment act of March 7, 1822, gave to Alabama two representatives. The following year a special act, January 14, 1823, ch. 2, gave her an additional member upon fuller information as to the number of her inhabitants. The act of March 6, 1820, ch. 22, enables Missouri to form a State government with one representative until the "next general census." She was admitted to the Union by joint resolution, March 2, 1821.

The act of June 15, 1836, ch. 100, admitted Arkansas to the Union with one representative "until the next general census."

The legislation by which Michigan was admitted to the Union was attended with much difficulty. It will be found in the acts of June 15, 1836, ch. 99, of June 23, 1836, ch. 121, and of January 26, 1837, ch. 6, and its difficulties are illustrated by the debates of the two Houses. In the present purpose it is deemed sufficient to refer to section three of the act of June 15, 1836, which provides that as soon as the people of Michigan should have complied with certain fundamental conditions the President should announce the same by proclamation; and thereupon, without further action of Congress, "the senators and *representatives who have been elected by the said State*" should be entitled to take their seats without further delay, nothing appearing in the statutes to indicate the number of representatives.

The act of March 3, 1845, ch. 48, for the admission to the Union of Iowa and Florida, provides that "until the next census and apportionment" each State be entitled to one representative. Iowa was not, in fact, admitted under this act and not until near the close of the following year, act of December 28, 1846, ch. 1; but no further provision was made for her representation.

The joint resolution of December 29, 1845, ch. 1, admits Texas to the Union with two representatives until the next apportionment.

The act of August 6, 1846, ch. 89, enables the people of Wisconsin to form a State government, with two representatives "until another census" and apportionment.

The act of September 9, 1850, ch. 50, admits California to the Union, with two representatives, until the next apportionment. Before that time the seventh census was taken pursuant to the act of May 23, 1850, and California declares, by virtue of her ascertained numbers, to be still entitled to two and only two representatives; and yet Congress thought proper, by act of June 2, 1862, ch. 91, for reasons appearing in the body of the act, to accord to her one additional representative in the thirty-seventh Congress.

The act of February 26, 1857, ch. 60, enables the people of Minnesota to form a State government, and provides for the taking of a census in the Territory with a view to ascertain the number of representatives to which, as a State, she would be entitled. The act of May 11, 1858, ch.



31, admits her to the Union, with two representatives "until the next apportionment."

The act of February 14, 1859, ch. 33, admits Oregon to the Union, with one representative "until the next census and apportionment."

The act of May 4, 1858, ch. 26, providing for the admission to the Union of Kansas, under the Lecompton constitution, and that of January 29, 1861, ch. 20, admitting her under the Wyandotte constitution, both declare her entitled to one representative "until the next general apportionment."

The act of December 31, 1862, ch. 6, erects a portion of the State of Virginia into the new State of West Virginia, with three representatives, leaving unchanged the number to which Virginia is entitled.

The act of March 21, 1864, ch. 36, enables the people of Nevada to form a State government with one representative "until the next general census;" and, on the 19th of April, 1864, an act similar in all respects was passed by the people of Nebraska, under which acts both States have been admitted to the Union, completing the present number, thirty-seven.

These various acts have been collated at some pains, to show how completely the number of representatives in the House has been contested, at the discretion of Congress, a discretion scarcely less absolute than that of each House over "the elections, returns, and qualifications of its own members."

This is illustrated by the arbitrary, nay, artificial numbers, at which the ratio was successively fixed, by allowing representatives for the fractions of the ratio, by the admission of new States with one, two, three, or more representatives according to their estimated populations, by reducing the representation of a State whose population had been reduced by the excision of part of her territory, by increasing the representation of States, as in the case of Alabama and California, when it was manifested that their population had been under-estimated, and by determining the aggregate number of the House and requiring our executive officer to make the apportionment among the several States.

It is illustrated even more forcibly, if possible, by the act of March 4, 1836, ch. 36; which increases the number of representatives from 233, the number established by the general law of May 23, 1850, to 241, giving to Pennsylvania, Ohio, Kentucky, Illinois, Iowa, Minnesota, Vermont, and Rhode Island, each one additional member, to which they were not entitled under the general law.

In a word, these acts establish the general proposition that Congress has complete jurisdiction to adjust the representative numbers of the House, and has repeatedly and constantly exercised it at discretion, according to the varied equity of each particular case.

#### THE CASE OF TENNESSEE.

The case of Tennessee is this: According to the census of 1860, the inhabitants of the United States, reckoning all free persons and three-fifths of all others, numbered 29,553,273. Divide by 241, the number of members now composing the House, it gives 122,627 as the present representative ratio. Tennessee had 834,082 free inhabitants, white and colored, and 275,719 slaves; a total of 1,109,801. Three-fifths of her slaves, however, added to her free population, on the principle of the representative enumeration, made 999,514, by virtue whereof she has now eight representatives.

In February, 1865, she, by *voluntary act*, a popular vote, manumitted



and emancipated her 275,719 slaves, nearly one-fourth of her population. Two fifths of this number, 110,288, are thereby added to those already entitled to representation. This, with a previous representative fraction, leaves 128,785, for which the State has no representative, counting only the population as it was in 1860. This excess of popular numbers over the number of her present representatives is not the result of growth or natural increase, in which the several parts of the country are presumed to keep pace, at least until the contrary is demonstrated by the census, but of a great political act, as conspicuous and distinctive as would be the annexation of a foreign territory containing so many people. For the purpose of this inquiry, it is as if the boundaries of Maine were, by treaty, extended to embrace Nova Scotia, with 110,288 inhabitants. Is it equitable and just that they should be denied a representative? The undersigned think not.

Since the voluntary action of Tennessee in emancipating her slaves, Congress has taken not only an important step toward settling the status of American citizenship, but also indicating a further proper basis of representation. On the 16th of June, 1866, what is known as article fourteen was submitted to the legislatures of the different States. On July 20, 1868, this article was formally proclaimed as a part of the Constitution of the United States by the Secretary of State. The second section of said article, to which particular attention is invited, reads as follows:

SEC. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

This section, though general in its terms, was adopted with particular reference to the recently emancipated colored population, and is a declaration to the several States in which this population is found, that if they are enfranchised, *the State shall be represented accordingly*; if not, *representation shall be diminished*. It either means this or is a mockery and means nothing.

As soon as possible after the promulgation of the proposed amendment—on the 16th of June, 1866—Tennessee convened her legislature and ratified it. She then changed her franchise laws to conform to the spirit of this amendment by removing from all colored people within her boundaries all civil and political disabilities, and conferring upon them the right to elect and to be elected to every office, from the highest to the lowest. Having done this, and the fourteenth article having become valid as a part of the Constitution, what was before a claim for full and complete representation, resting in the discretion of Congress, became now *an absolute, constitutional right*. For it must be borne in mind always that this action of Tennessee has been her own, independent and in advance of executive proclamations, constitutional amendments, and reconstruction acts. She has met all the conditions of the Constitution in a spirit of the most cheerful loyalty, and has created in her favor an obligation which cannot be canceled by being denied.

Her legislature, viewing the matter in this obvious light, has, by appropriate action, provided for the election of an additional represent-



ative. On the 3d day of November, 1868—the day of the late presidential election, and the day designated by law for the election of members of Congress in Tennessee—the people of that State, fully impressed that they were fairly entitled to an additional representative, proceeded to elect, and did elect, the Hon. Thomas A. Hamilton for the unexpired term of the fortieth Congress, and another gentleman, it is understood, to the forty-first Congress.

It was a matter of general notoriety in Tennessee, some time before it occurred, that such an election would be held. The people of the State were duly advertised of the fact by the act of the legislature and executive proclamations. The friends of the present applicant for a seat brought him forward as a candidate at a popular convention, unusually largely attended, at the capital of the State. The popular will was fully reflected at the polls in the fact that the applicant received nearly as many votes as were cast in that State on the same day for the prevailing presidential electoral ticket. The places for voting in this case were the same as those at which votes were given by persons of different political proclivities for different candidates for Congress and candidates for electors for President and Vice-President. Returns of the result in different counties were made in due form to the secretary of state, as appears in official documents, duly certified to. On these returns, after having been duly canvassed, the result was declared and a certificate of election issued by the governor of Tennessee to the claimant, which has been presented to the House and properly referred.

Thus stand the important facts in the case. The entire proceeding, from its inception to its consummation, has been remarkably regular and consistent.

The precedents cited as bearing upon the case are as weighty and significant as they are singularly numerous. *It is believed they have not been, or cannot be, successfully met or explained away.* These pointed examples of the unreserved exercise of legislative authority are, in themselves, a powerful warrant for the course which has been pursued by Tennessee. The vital point in the matter, however, is that Tennessee has not only followed “the line of safe precedent,” but has conformed strictly to the true intent and meaning of the fourteenth article of the Constitution.

The fact that Tennessee happens to be the *first* State to claim the practical application of the inestimable rights conferred in said article should not be regarded as anomalous or involving a precedent of doubtful or “dangerous policy.”

Objections founded upon any such reasoning are altogether likely to be speculative and fallacious, and lead to great injustice and wrong.

To admit the correctness of the somewhat sweeping statement that the admission of the claimant would be “a most dangerous precedent,” would certainly be a most severe commentary upon many of the deliberate acts of the Congresses preceding the present.

In the present instance Tennessee claims no right or privilege she would not willingly concede to any other State having a similar record.

If, upon a fair investigation of the grounds upon which she bases her right to an additional representative, it is found her cause rests upon merit and justice, and is sustained by unquestionable authority, her demand should receive a prompt and favorable response. To deny to her a manifest constitutional right upon the questionable and untenable objection that some other State may set up a similar claim, would surely afford abundant grounds for criticism, and come in direct antagonism with the policy heretofore maintained and pursued by Congress.

In reply to the allusions upon the influences that may have controlled “the aggregate *white* population of Tennessee” in consenting to emanci-



pation, it might be asserted with equal force and pertinence that the entire country, North as well as South, was strengthened if not emboldened by the remarkable "events" alluded to, in giving a final practical illustration of the sublime truth that "all men are created equal."

The part borne by the sixty thousand men of Tennessee who rallied to the standard of the Union in the late great struggle, was one upon which the whole country may look with gratification for all time. Of this number twenty thousand were colored men whose devotion and patriotism were illustrated upon the historic and sanguinary fields of Franklin and Nashville. Surrounded as Tennessee was by a cordon of slave States, she has no reason to look, other than with pride, at the course she has pursued in securing for our common country universal emancipation.

It is notorious that a new era has been inaugurated in our country as to popular rights. By the wonderful results of the late rebellion, long-entertained theories have been overthrown and repulsive dogmas forever obliterated. Four millions of bondmen have been raised from a position of abject servitude to the high and responsible position of American citizenship. The conferring of additional representation in the case of Tennessee will not only be a proper recognition of the claims of the recently enfranchised portion of our fellow-citizens, but will evince a consistent regard for the late decree of the American people expressed in their written Constitution.

The undersigned, therefore, beg leave to recommend the adoption of the following resolution:

*Resolved*, That the report of the Committee of Elections upon the credentials of Thomas A. Hamilton, claiming a seat in this House from the State of Tennessee, be recommitted to that committee, with instructions to report the accompanying bill.

DAVID HEATON.  
H. L. DAWES.  
JOHN H. STOVER.  
S. NEWTON PETTIS.

---

A BILL for an act to allow the State of Tennessee an additional representative in Congress.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the State of Tennessee, by the emancipation and enfranchisement of her colored population—slaves at the taking of the eighth census and the making the apportionment thereon—having added to her population, entitled to be represented in Congress, a number which, added to a portion previously unrepresented, is greater than the ratio by which the representatives are now apportioned, the said State shall be allowed, until the next general census and apportionment, one additional representative in Congress, who may be chosen from the State at large, unless the legislature of the said State shall otherwise provide.

---

### J. S. CASEMENT.

No vote was taken in the House upon this report.

February 23, 1869.—Mr. Cook, from the Committee of Elections, made the following report:

*The Committee of Elections, to which was referred the claim of J. S. Casement to a seat in this House as a delegate from the Territory of Wyoming, reports as follows:*

The Territory is not yet organized. Section 17 of the act to provide



for the temporary government for the Territory of Wyoming, approved July 25, 1868, is as follows:

This act shall take effect from and after the time when the executive and judicial officers herein provided for shall have been duly appointed and qualified: *Provided*, That all general territorial laws of the Territory of Dakota in force in any portion of said Territory of Wyoming at the time this act shall take effect shall be and continue in force throughout the said Territory until repealed by the legislative authority of said Territory, except such laws as relate to the possession or occupation of mines or mining claims.

Section 13 of the same act provides as follows:

A delegate to the House of Representatives of the United States, to serve during each Congress of the United States, may be elected by the voters qualified to elect members of the legislative assembly. The first election shall be held at such times and places and be conducted in such manner as the governor shall appoint and direct, and at all subsequent elections the times, place, and manner of holding elections shall be prescribed by law. The person having the greatest number of votes of the qualified voters, as hereinbefore provided, shall be declared by the governor elected, and a certificate thereof shall be accordingly given.

The election at which J. S. Casement claims to have been elected was held on the 8th day of October, A. D. 1867. The bill above referred to was passed July 25, 1868, and has not yet taken effect, for the reason that the executive and judicial officers provided for in said act have not been duly appointed and qualified. The election laws of Dakota are still in force in that Territory.

The election held on the 8th day of October, A. D. 1867, was not held in pursuance of any law, but was held in pursuance of a call made by a mass meeting, at which certain commissioners were appointed to make arrangements for holding a general election. It is apparent that this election had none of the safeguards provided by law to secure the purity of elections; no one could be punished for illegal voting, or for receiving illegal votes, or for excluding legal votes, or for making false returns; no qualifications of voters had been prescribed by law; not even a residence in the Territory was required; no voting precincts had been established by law. Three persons, who sign their names as commissioners of elections, have made a certificate that the election was held, and that J. S. Casement was elected delegate to Congress. A copy of this certificate is hereto annexed, marked A.

The only other evidence adduced before the committee in support of the claim was an affidavit of J. H. Hayfer, a copy of which is hereto annexed, marked B.

It is not contended that there is any law entitling the claimant to a seat as a member of this House, and it is apparent that, according to law, the first election must be holden in a very different manner, and the certificate be given by the governor; but it is insisted that it is a matter within the discretion of the House, and that there are precedents which would justify the admission of the claimant to a seat; and the admission of members of Congress from Arkansas who were elected before the State constitution was approved by Congress, or the State admitted as one of the States, is cited.

This precedent is not in point, for the reason that Arkansas was a State in the Union at the time when the first representatives from that State were admitted to seats in Congress, and the committee find no precedent for the admission of a member from a State or a delegate from a Territory which was not organized at the time the member or delegate was sworn and admitted to his seat. The Territory of Wyoming is not now organized, and no reason can be given for the admission of the claimant in this case which would not be equally good to sustain the claim of a delegate from Alaska, should a mass meeting be convened



at Sitka, and a delegate be elected by such meeting. The committee recommends the adoption of the following resolution:

*Resolved*, That J. S. Casement is not entitled to a seat in this House as a delegate from the Territory of Wyoming.

---

EXHIBIT A.

Whereas, at an election holden in that portion of the Territory of Dakota which comprises the proposed Territory of Wyoming, on the 8th day of October, A. D. 1867, which election was called by a mass meeting of the citizens residing in said district of country, and general notice thereof was given by the undersigned, who were appointed a committee by said mass meeting, and at such election J. S. Casement, being a candidate for the office of delegate in Congress to represent the interests of the aforesaid district of country, did receive a majority of the votes cast at said election; therefore, it is hereby certified that the said J. S. Casement was at the said election duly and legally elected to the office of delegate to Congress, as aforesaid.

In testimony whereof, witness our hands and seals this 28th day of October, A. D. 1867.

THOMAS J. STREET,	[SEAL.]
W. L. KUYKENDALL,	[SEAL.]
LUCIAN L. BEDELL,	[SEAL.]

*Commissioners of Elections.*

---

EXHIBIT B.

I am a resident of Cheyenne, in the Territory of Wyoming, and have resided there since about the last of August, 1867, and for nearly a year past have been one of the editors of the Rocky Mountain Star, a daily and weekly newspaper published in said city.

During the summer and fall of 1867 the Territory of Wyoming (then a part of Dakota) was being rapidly populated by emigration from all parts of the country. Finding ourselves without organization, without executive or judicial officers, and almost without law, being over eight hundred miles from Yankton, the seat of government for Dakota Territory, with no legal way to enforce contracts, collect debts, punish wrongs, and protect our persons and property, we looked anxiously for an early and speedy organization of our Territory, and for an opportunity to make our wants known to Congress through our delegate. For the purpose of hastening this result, a notice was published calling the citizens together in mass convention to take such steps as might be deemed best calculated to hasten a territorial organization. This convention, which was largely attended, did, among other things, select commissioners, who were to make arrangements for a general election for a delegate to Congress.

These commissioners did accordingly appoint a time and designate the various places for holding said election, which notice was generally published throughout the Territory. An election was accordingly held and judges and clerks were selected and sworn, and it was conducted essentially in accordance with the usual formalities of similar elections, and the results and poll-books were returned to the aforesaid commissioners. There were about 2,800 votes polled at said election, of which J. S. Casement received over 2,000, there being two other candidates in the field. Since that time our organization has been delayed from time to time.

The preliminary steps toward it taken by Congress have rather increased our difficulties, and placed us in an anomalous condition by practically cutting us off from Dakota without perfecting our organization by giving us a government of our own. We feel that had we a voice in Congress, through a delegate who would make our condition known, these matters would be remedied.

Mr. Casement possesses the confidence of our people and knows our wants, and I feel justified in saying that it would give almost universal satisfaction in our Territory if he were permitted to represent us in your honorable body.

J. H. HAYFER.

Subscribed and sworn to before me this 15th day of January, A. D. 1869.

[SEAL.]

JAMES H. MCKENNEY,  
*Notary Public, Washington County, D. C.*



## FORTY-FIRST CONGRESS, FIRST SESSION.

## COMMITTEE OF ELECTIONS.

Messrs. PAINE, of Wisconsin.  
 CHURCHILL, of New York.  
 HEATON, of North Carolina.  
 CESSNA, of Pennsylvania.  
 BUTLER, of Tennessee.

Messrs. STEVENSON, of Ohio.  
 BURDETT, of Missouri.  
 BURR, of Illinois.  
 RANDALL, of Pennsylvania.

At the second session the following names were added:

Messrs. BROOKS, of Massachusetts.  
 DOX, of Alabama.  
 HALE, of Maine.

Messrs. KERR, of Indiana.  
 MCCRARY, of Iowa.  
 POTTER, of New York.

Owing to the large number of contests the House authorized the chairman of the committee to appoint sub-committees of three members and assign cases to them; said sub-committees having power to report the cases assigned directly to the House.

## FOSTER vs. COVODE.

Neither party held the governor's certificate, but *ex parte* affidavits alleging frauds in behalf of Foster were sent to the House by the governor. It was held that under the instructions of the House, Covode had the *prima facie* title to the seat.

The House recommitted the case, April 2, 1869, for investigation upon the merits, and time was given to the parties to take testimony.

March 26, 1869.—Mr. Cessna, from the Committee of Elections, made the following report:

*The Committee of Elections, to whom were referred "so much of the proclamation of the governor of Pennsylvania, dated November 17, 1868, as to the election of representatives in the twenty-first district of said State, and the letter of said governor, dated February 23, 1869, relative thereto, together with the papers referred to in said letter, with instructions to report to the House what person, according to said proclamation, letter, and papers, is entitled, prima facie, to represent said twenty-first district in the forty-first Congress, pending any contest that may arise concerning the right to such representation," submits the following report:*

It appears, from the proclamation of the governor, referred by the resolution, that when the governor of said State issued his general proclamation, on the 17th of November, 1868, declaring who had been elected to represent the several districts of the State in the forty-first Congress, he declined to declare any one elected in the twenty-first district, stating—

That no such returns of the elections have been received by the secretary of the Commonwealth as would, under the election laws of the State, authorize me to proclaim the name of any person as having been returned duly elected a member of the House of Representatives of the United States for that district.

The general proclamation of the governor being a blank, so far as the twenty-first district is concerned, the committee next turned their attention to the letter of the governor of Pennsylvania, which is as follows:

PENNSYLVANIA EXECUTIVE CHAMBER,  
 Harrisburg, Pennsylvania, February 23, 1869.

SIR: I have the honor to transmit herewith additional affidavits and evidences of fraud submitted to me in regard to the election of member of Congress in the twenty-first congressional district of this State.



These affidavits were taken before officers properly authorized to administer oaths' and indicate the election of Hon. John Covode.

Most respectfully, your obedient servant,

JOHN W. GEARY,  
Governor of Pennsylvania.

Hon. EDWARD MCPHERSON.

Clerk of the House of Representatives, Washington, D. C.

The signature of the governor to this document was duly certified by the secretary of the Commonwealth, and the seal of the State attached.

It is claimed, by Mr. Covode, that this letter gives him a *prima facie* right to the seat—it being a supplemental proclamation, as he alleges, and intended to be the decision of the governor that he, Covode, was elected in the twenty-first district.

By the general election law of Pennsylvania, Purdon's Digest, 8th edition, section 63, it is provided, where two or more counties compose a district for the choice of a member of the House of Representatives, that after an election has been held, the judges of election in each county having met, the clerks shall make out a fair statement of all the votes which shall have been given at such election, within the county, for every person voted for as such member, which shall be signed by said judges and attested by the clerks; and one of the said judges is to take charge of said certificates of votes, and produce the same at a meeting of one judge from each county, at such place in such district as is, or may be, provided by law for that purpose. The judges of the several counties having met, are required (section 64) to cast up the several county returns and make duplicate returns of all the votes given for such office of representative in Congress in said district, and of the name of the person elected, and to deposit one of said returns for said office of representative in the office of the prothonotary of the court of common pleas of the county in which they shall meet, and to place the other return in the nearest post office, sealed and directed to the secretary of the Commonwealth.

The said return judges are also required (section 65) to transmit to the person elected to serve in Congress, a certificate of his election within five days after the day of making said return.

On the receipt of the return of the election of members of the House of Representatives of the United States, as aforesaid, by the secretary of the Commonwealth, the governor is required (section 113) to declare by proclamation the names of the persons so returned as elected in the respective districts, and also to transmit as soon as conveniently may be thereafter the returns so made to the House of Representatives of the United States.

The papers referred to the committee not embracing any of the certificates required by law to be given by the return judges of the counties and districts, the investigations of the committee were necessarily confined to the letter of the governor and the accompanying papers.

If it was intended by the governor to decide in this letter that John Covode was duly elected from the twenty-first district of Pennsylvania, and if he did intend his paper or letter of February 23, 1869, as supplemental to his general proclamation, or as his only proclamation in regard to the election of representative in said district, then a majority of the committee is of opinion that he had a right to so decide under precedents heretofore furnished by the House. (*Vide* Butler vs. Lehman, Contested Election Cases in Congress, p. 353.) In the case cited, William F. Packer, governor of Pennsylvania, set aside all returns upon the ground of fraud, and decided upon *ex parte* evidence who was elected.



The House sustained the action of the governor by allowing Mr. Lehman to hold the seat during the contest.

As there is no prescribed form in the law of Pennsylvania for the proclamation, nor any time fixed at which it shall be issued, nor any specified mode of publication required to be made, it is difficult to see that anything is required by the proclamation named in the law more than a decision as to who is duly elected in the respective districts of the State, and notice of such decision given to the parties elected and to the House of Representatives.

A majority believes that the committee has but little discretion in the premises. The language of the resolution under which we are acting requires us to report to the House what person is entitled, *prima facie*, to represent the twenty-first district of Pennsylvania in the forty-first Congress, according to the papers referred to us. It would seem from this resolution of reference that the House was satisfied that some one had a *prima facie* right to the seat on these papers, and that the only inquiry for us was as to the person so entitled.

The committee is further sustained in this view from the fact that at the time these papers were referred, an effort was made in the House to refer other papers seeming to be connected with the case, and this effort was unsuccessful. This effort was subsequently repeated with a like result.

It is conceded that an election was held in this district, and that some person was duly elected, and the inquiry that we are to make seems to be, Who is that person? It is not pretended, neither is there any evidence before the committee showing that there were any candidates for Congress in that district except John Covode and Henry D. Foster, and the committee is not required to decide who was legally elected, but simply to determine what person appears to have the better right, and is entitled *prima facie* to represent said district pending any contest that may arise. From this standpoint, a majority of the committee has found no difficulty in coming to the conclusion that John Covode is that person.

The proclamation of the governor of Pennsylvania, his letter, and the affidavits, constitute the evidence submitted by the House to the committee, and from these the committee is required to determine the question submitted to it. The first of these, viz., the proclamation, disposes entirely of the claim of Henry D. Foster; he nowhere appears again except in the unfavorable light presented by the affidavits. The second, viz., the governor's letter, seems to show the election of Mr. Covode, and having been made evidence, together with the accompanying affidavits, for the purposes of this inquiry, by the resolution of the House, establishes his *prima facie* right to the seat.

The affidavits referred by the same resolution of the House to the committee would seem to warrant the decision reached by the governor in the premises. They show very many irregularities and several gross frauds perpetrated at election precincts in that district.

These frauds were of a character so glaring that they cannot be defended by any one having a regard for the purity of elections, or any respect for the doctrine that the will of the majority, as expressed by the people at the ballot-box, shall be the law of the land.

It is not believed by the committee to be their duty, nor is it regarded under the resolution of the House as at all necessary, to examine into the reasons which influenced the governor of Pennsylvania, nor to review his action in the premises. Were this required we might recite the case already recited, *Butler vs. Lehman*, in which the governor of Pennsylvania went behind all returns and certificates in order to prevent the success of a gross fraud.



The frauds in this case, as shown by the affidavits, were but little, if any, less flagrant than they were in that.

No fraud attempted upon the people of a district should ever be sanctioned. When fraud appears it should defeat all who seek to take advantage of it or attempt to shelter themselves behind it. In the eye of the law fraud spoils everything it touches; even the broad seal of a Commonwealth is crumbled into dust, as against the interest designed to be defrauded. It is not protected by record, judgment, or decree, but whenever and wherever it is detected its disguises fall from around it, and it stands exposed to the rebuke and condemnation of the law.

In the case of *Morton vs. Daily*, Contested Election Cases, page 403, the governor had given a certificate to Mr. Morton; he afterward discovered a fraud and revoked it, and gave a second certificate to Mr. Daily; the House sustained the governor. In the present case it is not claimed that the governor of Pennsylvania gave a certificate to any one for the twenty-first district, prior to the 23d of February, 1869. His action of that date was, therefore, not so much a departure from the usual practice as was the action of the governor of Nebraska in the case of *Morton vs. Daily*, which received the sanction of the House. But, as has already been remarked, it is not the province of this committee to consider or decide this question. It is instructed to report from *particular evidence* sent to us by the House, and the conduct of the governor is not for our consideration. We are to determine what person, from the evidence submitted, is *prima facie* entitled to this seat. All questions as to the legality of this election, and the whole merits of this controversy, are to be the subjects of future inquiry.

There are two parties claiming this seat; both cannot be contestants; one or the other should be admitted before the contest begins; the district should not remain unrepresented.

If the committee have erred in their conclusions, the sooner the contest begins the sooner the legal right will be established.

The committee, therefore, recommend the adoption of the following resolutions:

*Resolved*, That John Covode, upon the letter of the governor and papers relating to the election in the twenty-first congressional district of the State of Pennsylvania, referred by the House to this committee, has the *prima facie* right to the vacant seat from that district, and is entitled to take the oath of office and occupy a seat in this House as the representative in Congress from said district, without prejudice to the right of Henry D. Foster, claiming to have been duly elected thereto, to contest his right to said seat upon the merits.

*Resolved*, That Henry D. Foster, desiring to contest the right of Hon. John Covode to a seat in this House as a representative from the twenty-first district of the State of Pennsylvania, be, and he is hereby, required to serve upon the said Covode, within twenty days after the passage of this resolution, a particular statement of the grounds of said contest; and that the said Covode be, and he is hereby, required to serve upon the said Foster his answer thereto within twenty days thereafter; and that both parties be allowed sixty days, next after the service of said answer, to take testimony in support of their several allegations and denials; notice of intention to examine witnesses to be given to the opposite party at least five days before their examination, but neither party to give notice of taking testimony within less than five days between the close of taking at one place and its commencement at another, but in all other respects in the manner prescribed in the act of February 19, 1851.



## MINORITY REPORT.

The undersigned, a minority of the Committee of Elections, with the permission of the House, submit the following statement in the contested election case from the twenty-first congressional district of Pennsylvania:

The House referred to the committee, 1st, a certified transcript of the governor's proclamation; 2d, a letter of the governor; and 3d, certain papers mentioned in said letter; and instructed the committee "to report to the House what person, according to said proclamation, letter, and papers, is entitled *prima facie* to represent said twenty-first district in the forty-first Congress, pending any contest that may arise concerning the right to such representation."

Two questions arise: 1st. Are the papers, or any of them, legal evidence? 2d. If accepted as legal evidence, what do they prove in the absence of rebutting evidence?

The first document is, as to all the districts of Pennsylvania except the twenty-first, clearly competent evidence; for it is the duly authenticated transcript of a proclamation made by the governor in strict accordance with the statute of Pennsylvania. The following is the language of the statute:

It shall be the duty of the governor, on receipt of the returns of the election of members of the House of Representatives of the United States, as aforesaid, by the secretary of the Commonwealth, to declare by proclamation the names of the persons so returned as elected in the respective districts; and he shall also, as soon as conveniently may be thereafter, transmit the returns, so made, to the House of Representatives of the United States.

And the proclamation contains the following language:

[GREAT SEAL.]

In the name and by the authority of the Commonwealth of Pennsylvania, John W. Geary, governor of the said Commonwealth.

Whereas, in and by an act of the general assembly of this Commonwealth, approved the 2d day of July, A. D. 1839, entitled "An act relating to the elections of this Commonwealth," it is made the duty of the governor, on the receipt of the returns of the election of members of the House of Representatives of the United States by the secretary of the Commonwealth, to declare by proclamation the names of the persons returned as elected in the respective districts:

And whereas the returns of the several elections held on Tuesday, the thirteenth day of October last, in and for the several districts for representatives of the people of this State in the House of Representatives of the Congress of the United States for the term of two years from and after the 4th day of March next, have been received in the office of the secretary of the Commonwealth, agreeably to the provisions of the above recited act, whereby it appears that in the first district, composed of the Second, Third, Fourth, Fifth, Sixth, and Eleventh wards, in the city of Philadelphia, Samuel J. Randall has been duly elected; \* \* \* \* in the twenty-first district, composed of the counties of Indiana, Westmoreland, and Fayette, no such returns of the election have been received by the secretary of the Commonwealth as would, under the election laws of the State, authorize me to proclaim the name of any person as having been returned duly elected a member of the House of Representatives of the United States for that district; \* \* \*

Now, therefore, I, John W. Geary, governor as aforesaid, have issued, this my proclamation, hereby publishing and declaring that Samuel J. Randall, \* \* \* (containing no name for the twenty-first district) \* \* \* have been returned as duly elected in the several districts before-mentioned as representatives of the people of this State in the House of Representatives of the Congress of the United States for the term of two years, to commence from and after the 4th day of March next.

Given under my hand and the great seal of the State, at Harrisburg, this seventeenth day of November, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Commonwealth the ninety-third.

JOHN W. GEARY.

By the governor:

F. JORDAN,

Secretary of the Commonwealth.



This proclamation was therefore an official act, and the transcript referred to the committee is legal evidence so far as it goes. But it proves nothing in favor of either of the claimants to the seat for this particular district.

The letter, which is dated February 23, 1869, more than three months after the date of the proclamation, is not authorized or made an official act or document by any statute of the State of Pennsylvania. In it the governor does not declare, as required by law to do in his proclamation, that John Covode has been returned as elected in the twenty-first district, but that certain affidavits "indicate the election of Hon. John Covode." The following is the entire letter:

PENNSYLVANIA EXECUTIVE CHAMBER,  
*Harrisburg, Pennsylvania, February 23, 1869.*

SIR: I have the honor to transmit herewith additional affidavits and evidences of fraud submitted to me in regard to the election of member of Congress in the twenty-first congressional district of this State.

These affidavits were taken before officers properly authorized to administer oaths, and indicate the election of Hon. John Covode.

Most respectfully, your obedient servant,

JNO W. GEARY,  
*Governor of Pennsylvania.*

HON. EDWARD MCPHERSON,  
*Clerk House of Representatives, Washington, D. C.*

STATE OF PENNSYLVANIA,  
OFFICE OF THE SECRETARY OF THE COMMONWEALTH,  
*Harrisburg, Pennsylvania, February 23, 1869.*

I hereby certify that the signature of John W. Geary, governor of this Commonwealth, to the attached letter, is his genuine signature; and that the accompanying affidavits and papers are the originals filed in this office from time to time since the election held on the 13th of October last.

In testimony whereof I have hereunto set my hand and caused the seal of the secretary's office to be affixed the day and year above written.

[SEAL.]

F. JORDAN,  
*Secretary of the Commonwealth.*

This letter, being unauthorized by law, has no official character. It is not the act of the governor, but of the individual. It is no more legal evidence than would be the unsworn statement of any other citizen of Pennsylvania. Furthermore, it is not under the great seal of the State. It is correctly characterized in the authenticating certificate of the secretary of the Commonwealth, and in the resolution of the House, as a "letter." It does not, like a solemn proclamation, begin, "In the name of the Commonwealth of Pennsylvania," and end with the words "Given under my hand and the great seal of the State," but, like an ordinary epistle, it begins with "Sir," and ends with "Most respectfully, your obedient servant." It is true that it is subscribed "Jno. W. Geary, governor of Pennsylvania." But a letter addressed by the governor, as this is, to the Clerk of the House, recommending an applicant for a position in his department, might have been, and probably would have been, subscribed in the same way, and if so subscribed, would have had the same official character which this letter has. And an authenticating certificate of the secretary of the Commonwealth would contribute as much of official character to such a recommendation as the secretary's certificate in this case does to the letter. Inasmuch as this letter is not legal evidence, it is not material to inquire whether, if it really were competent evidence, it would amount to *prima facie* proof that either claimant is entitled to the seat.

The affidavits, which are *ex parte*, were not authorized by any statute, and are not evidence in this case. If they were evidence, they would



not apart from the letter show a *prima facie* right to the seat in either of the claimants.

The only ground upon which it can be alleged that either the letter or the affidavits are legal evidence is that the resolution of the House, instructing the committee to report "what person, according to said proclamation, letter, and papers, is entitled, *prima facie*, to represent" the district, imparts the character of legal evidence to these papers. But if such a resolution of the House would make the letter and affidavits of Mr. Geary legal evidence, it would also make the letter and affidavits of Mr. Doe or Mr. Blank legal evidence; and might enable parties to give such letters and affidavits, whether signed or not, any desired form, to establish any desired *prima facie* case; for not one paper in one hundred of those referred to the Committee of Elections by the House is ever read or seen by ten members of the House before it reaches the committee. But the truth is, the reference of a paper is not decisive in one way or the other of its competence as evidence. That question is always to be decided by the committee and by the House.

The undersigned recommend the adoption of the following resolution:

*Resolved*, That the proclamation, letter, and papers referred to the Committee of Elections do not show what person is entitled *prima facie* to represent the twenty-first district of Pennsylvania in the forty-first Congress, pending any contest that may arise concerning the right to such representation.

H. E. PAINE.  
JOHN C. CHURCHILL.  
ALBERT G. BURR.  
SAM. J. RANDALL.

---

#### ADDITIONAL MINORITY REPORT.

In the matter relating to the representation from the twenty-first district of Pennsylvania, the undersigned, concurring in the report presented by the minority, ask to present for consideration the following, as a separate additional minority report:

The House resolution of March 5 contains instructions to the committee, and is as follows:

*Resolved*, That so much of the proclamation of the governor of Pennsylvania, dated November 17, 1868, as relates to the election of representative in the twenty-first district of said State, and the letter of said governor, dated February 23, 1869, relative thereto, together with the papers referred to in said letter, be referred to the Committee of Elections, when appointed, with instructions to report to the House what person, according to said proclamation, letter, and paper, is entitled, *prima facie*, to represent said twenty-first district in the forty-first Congress, pending any contest that may arise concerning the right to such representation.

Most singular in its framework is this resolution of instructions—most skillfully drawn and guarded in its requirements. In the light of the several papers referred to in that resolution, and excluding all others, the committee is charged to report to the House what person, "according to said proclamation, letter, and paper, is entitled, *prima facie*, to represent said twenty-first district in the forty-first Congress, pending any contest that may arise concerning the right to such representation."

The laws of Pennsylvania regulating elections provide for returns to be made by the election officers of a voting district or precinct, to those of a county, and by them to the return officers of a congressional dis-



trict, and by them, in turn, to the secretary of the Commonwealth; after which the duty of the governor is specified as follows:

It shall be the duty of the governor, on the receipt of the returns of the election of members of the House of Representatives of the United States as aforesaid by the secretary of the Commonwealth, to declare by proclamation the names of the persons so returned as elected in the respective districts, and he shall also, as soon as conveniently may be thereafter, transmit the returns so made to the House of Representatives of the United States. (Purdon's Digest, page 383, par. 114.)

By this law the governor is required only to "declare by proclamation" the result certified to him by the return judges, and to transmit the returns made by said judges to the House of Representatives. In this the governor acts simply as a ministerial officer; he is invested with no judicial functions whatever; he is not required to examine and determine any controverted point, but only to declare to the public by proclamation such result as has been previously determined and certified to his hand by officers specially charged by law with that duty.

On Tuesday, October 13, 1868, an election was held in the various congressional districts of Pennsylvania for representatives in the forty-first Congress. Returns were made according to law from subordinate officers, and finally returns were certified from each congressional district to the secretary of the Commonwealth. On the 17th day of November following, the governor (John W. Geary) issued his proclamation, declaring the "names of persons returned as elected in the several districts," except in the twenty-first district, composed of the counties of Indiana, Westmoreland, and Fayette, concerning which he declares that "no such returns of the election have been received by the secretary of the Commonwealth as would, under the election laws of the State, authorize me to declare the name of any person as having been returned duly elected a member of the House of Representatives of the United States for that district." As above stated, this proclamation was issued November 17. On December 3 the governor, in obedience to law, transmitted to the Speaker of the House of Representatives the following letter:

PENNSYLVANIA EXECUTIVE CHAMBER,  
Harrisburg, Pa., December 3, 1868.

SIR: In compliance with the provisions of an act of the general assembly of this Commonwealth, approved 2d July, 1839, I have the honor to forward you the returns of the late election in this State for members of Congress; and I also send certified copies of proclamations of election of said members.

I am, sir, very respectfully, your obedient servant,

JNO. W. GEARY.

Hon. S. COLFAX, *Speaker House of Representatives.*

At the same time he accompanied said returns with certified copies of his proclamation declaring the result. In all the districts, save the twenty-first, he had done all the law required in declaring the names of persons elected and transmitting the returns to this House; and in the district in question he had given a reason for not so declaring, which reason must have been satisfactory to himself at least. Up to the 3d day of December following, his excellency found "no such returns" in the office of the secretary as would authorize him to proclaim the name of any person as having been elected in that district, or justify any declaration of title in favor of any one to a seathere pending investigation; and on that same day (December 3) he parted with all the documents and records which by law could furnish the foundation of such declaration as to any district, by transmitting all the returns to the Speaker of this House. In the judgment of the undersigned the duty of the governor ends with the transmission of the returns to this House, and from that



moment his authority is concluded in the premises. Where is any evidence, so far, of title to a seat from that district? By whom has it been proclaimed or declared? In whose favor has the proclamation been issued and the declaration made?

But it is said that by a subsequent document the governor supplied the omission in his proclamation of December 3 relating to the twenty-first district by declaring Hon. John Covode elected. But as the "returns" on which alone a proclamation could be legally based had passed from his possession on the 3d of December, at which time no case was made out which would in his judgment authorize him to declare any one elected in that district, what additional official information could he have on which to base a proclamation or declare a result at a later period?

That subsequent document is as follows:

PENNSYLVANIA EXECUTIVE CHAMBER,  
*Harrisburg, Pa., February 23, 1869.*

SIR: I have the honor to transmit herewith additional affidavits and evidences of fraud submitted to me in regard to the election of member of Congress in the twenty-first congressional district of this State.

These affidavits were taken before officers properly authorized to administer oaths, and indicate the election of Hon. John Covode.

Most respectfully, your obedient servant,

JNO. W. GEARY,  
*Governor of Pennsylvania.*

HON. EDWARD MCPHERSON,  
*Clerk House of Representatives, Washington, D. C.*

STATE OF PENNSYLVANIA,  
OFFICE OF THE SECRETARY OF THE COMMONWEALTH,  
*Harrisburg, Pa., February 23, 1869.*

I hereby certify that the signature of John W. Geary, governor of this Commonwealth, to the attached letter, is his genuine signature; and that the accompanying affidavits and papers are the originals filed in this office from time to time, since the election held on the 13th of October last.

In testimony whereof I have hereunto set my hand and caused the seal of the secretary's office to be affixed the day and year above written.

[SEAL.]

F. JORDAN,  
*Secretary of Commonwealth.*

By virtue of what law of Pennsylvania were affidavits of any character submitted to the governor for his consideration? By the sanction of what law did he transmit them to the Clerk of this House? By what legal right did he base any act of his on such affidavits, or on *any* affidavits connected with an election? He had already done all that in his judgment he had any authority to do; and had parted with all the records which gave him an original right to do anything whatever in the case. If he had before that time done all his duty, the duty was ended. If he had omitted any duty, in not having officially declared a result in the twenty-first district, the time for the discharge of that duty passed, and the power to discharge it ceased, when the returns left his possession; and any later act of his in the premises was without sanction of law, of none effect, and entitled to no consideration here or elsewhere.

But it is said the governor was not bound by law to accept such returns as conclusive, but might go behind them, and on evidence of fraud at the polls set aside the returns in whole or in part, and declare a different result than the one made apparent by such returns. When, however, we seek authority for such judicial power in the executive, we are pointed, not to the statutes, but to a case arising in that State in 1860, reported in Bartlett's Contested Elections in Congress, page 353, and relied on to justify Governor Geary and give validity to his act in



going behind the returns in the case under consideration. It is the case of *Butler vs. Lehman*, in which Governor Packer declared Lehman duly elected, notwithstanding certain papers purporting to be returns showed Butler to have received a majority of the votes. But what were the facts connected with the action of Governor Packer? Briefly as follows: The *Butler vs. Lehman* case grew out of an election in the first Pennsylvania district, on October 9, 1860; on the 12th the board of return judges certified that Butler had received 8,581 votes; Lehman, 8,383 votes; and one Edward King, 2,057. On this state of facts it would seem that the governor was bound to declare Butler elected in that district, whereas he did on the 8th day of November declare Lehman elected instead of Butler. Why? Because some one charged fraudulent voting? Because illegal votes were received, or legal votes rejected? No; the existence of any of these supposed facts would have been ground for a contest on the merits, but could not affect the *prima facie* right to the seat, nor justify the governor in modifying the returns by accepting the votes wrongfully rejected, or throwing out those wrongfully received. It would be his duty to declare the result apparent on the face of the returns, and let the contest be determined by the House of Representatives, which alone could judge of the "election returns and qualifications of its members." But in the case cited was another element, of which Governor Packer was bound to take official notice. Among the papers considered by the return judges in making up the result, was one purporting to be a return of votes from the Fourth ward in the city of Philadelphia. On the 12th of October the return judges accepted that paper without challenge and found the result, as stated, in favor of Butler. But during the same month, and before the governor issued any proclamation declaring the result, the paper purporting to be the proper return from the Fourth ward was proved in court to be a forgery committed by one William Byerly, who was arraigned, tried, convicted, and sentenced in a court of competent jurisdiction for the crime of making and issuing said paper as a return, when in fact it was not a return, but a forgery perpetrated by himself. The trial, conviction, and sentence of Byerly all occurred in October, and on November 8, when the governor came to inspect the returns in order to "declare who was elected," the records of a court, of which the highest officer as well as the most humble citizen is bound to take notice, gave him the information that a certain paper was not a return but a forgery, and forbade giving it any credit or consideration in declaring the result. He did not receive affidavits to impeach the returns; he did not sit in judgment on the officers of election, and review their work; he did not even decide what should be accredited and what should be rejected; a competent judicial tribunal had performed that duty, and when the forged paper came under notice (if at all) the court by its records said to him, "That is a forgery, and in no respect a return or other record; you shall not consider it;" and Governor Packer, as an honest executive, obeyed the mandate of the court, and, omitting that paper, declared the election of Lehman. In all this he merely obeyed the law requiring him to "declare, by proclamation, the name of the person returned as elected." He did not issue a proclamation declaring a given state of facts, and at a later period announce by supplemental proclamation, or even by letter, a different and contradictory state. By one final proclamation he declared the result and ended his action. But it is said he "went behind the returns" to declare such result. Not so; he followed the returns and merely announced the result made apparent on their face, the Byerly paper having been judically determined to be no return.



Now can this case be made a precedent to justify Governor Geary in suppressing returns, or in refusing to "declare" the result shown on the returns in the proper office, and which he is by law required to declare? Because Governor Packer was restrained by a judicial decision from regarding a forged paper as of legal value, is Governor Geary to suspend for further canvass the returns actually received, invite private and perhaps irresponsible parties to send in *ex parte* affidavits during a period of over four months, and finally, long after the issuance of his proclamation under the statute, certify that these affidavits, taken without notice and in derogation of all law, "indicate the election of Hon. John Covode?"

But conceding, for the moment, the right of the governor to issue a supplemental proclamation, is the document of date February 23 such an instrument as is contemplated by the law of Pennsylvania? A "proclamation" is an official notice to the public, a public declaration made by competent authority. By Webster a proclamation is defined as "publication by authority, official notice given to the public," "the paper containing an official notice to a people." But the document in question is a mere private communication sent by Governor Geary to the Clerk of this House. It has none of the elements of a proclamation, is not issued by competent authority, for it lacks authority of law; and an unauthorized act by an official has no more legal force than the same act by a private citizen. It is not addressed or directed to the public, nor is it intended for their consideration. It does not declare a result, but merely ventures an opinion, and that only incidentally, for the object alone of the document was to transmit papers, called "affidavits and evidences of fraud," to the Clerk. The Clerk himself does not consider it in any sense an official document, else he surely would have acted upon it and placed on the rolls the name of Hon. John Covode as the member from the district in question. Further, the paper under consideration has no "great seal of the Commonwealth," as has the proclamation of November 17; and if it be said that the certificate of the secretary of the Commonwealth shows this paper to have been issued by John W. Geary, as governor, it will be seen that, by the same certificate, the secretary designates the paper in question, not as a proclamation or official document, but as a "letter" only. So far as this is a private communication we have nothing to do with it; but in so far as we are required to consider it in deciding a *prima facie* right to the vacant seat, the preceding comments are considered justifiable. In the view of the undersigned, for the reason aforesaid, neither the letter of February 23, nor the affidavits accompanying, have any legal value in determining the question submitted. So far as the affidavits are concerned, suppose all were considered as true and in all respects competent as testimony, what do they show? At most, that some votes were wrongfully received, and some erroneously rejected, at the election in question. They do not, nor do any papers before the committee, show how many votes were cast for any one as a candidate in that district. The only manner in which the "affidavits" could "indicate" a result would be to furnish information whereby we might add to or subtract from the aggregate vote previously ascertained to have been cast for the respective parties; but the only ascertained result is embodied (if anywhere) in the "returns," which have been carefully excluded from consideration here, and which had been sent from the governor months before he ascertained what the affidavits in question "indicated."

There is no statement anywhere in the papers submitted of the numbers of votes received by any one; nor any declaration—or even state-



ment—that any designated individual had received a majority of the votes cast, nor was elected, nor is in any respect, or by any rule of law, entitled to the seat.

Inasmuch, therefore, as no *prima facie* case is made in favor of any one by the papers before the committee, and inasmuch as the House has limited this preliminary investigation to the papers indicated, the undersigned, presenting the foregoing views, as called for under all the circumstances, concur in the resolution reported by the minority of the committee.

ALBERT G. BURR.  
SAML. J. RANDALL.

### HUNT vs. SHELDON.

Hunt received a majority of votes cast, but the board of canvassers threw out the vote of four parishes for alleged illegality of the returns, and the governor gave the certificate to Sheldon.

The committee, under House instructions, looked into the validity of the election and found that no valid election was held in the parishes of Orleans and Jefferson, owing to violence and intimidation, and recommended that Sheldon has the *prima facie* right to the seat.

Violence in certain precincts does not invalidate the election in others where the election proceeded peaceably.

The House adopted the report (April 8, 1869) by yeas 85, to nays 38.

March 31, 1869.—Mr. Stevenson, from the Committee of Elections, made the following report:

*The Committee of Elections, to which were referred the credentials of persons claiming seats in this House as representatives from the State of Louisiana, with the letter of the governor, and the report of the committee of investigation of the legislature of that State, with instructions to ascertain the right of such persons, and to inquire into the validity of the election for members of the forty-first Congress in the several congressional districts of said State on the 3d day of November, A. D. 1868, and also to inquire whether the persons claiming to have been elected in such districts are qualified under the Constitution and laws to take seats as members of this House, submits the following report upon the claim of Lionel Allen Sheldon to a seat as representative from the second congressional district of Louisiana.*

In accordance with the laws of Louisiana, on the 3d day of November, A. D. 1868, in the second congressional district of that State, an election was held for a representative of the district in the forty-first Congress. The only candidates for that office were Lionel Allen Sheldon and Caleb S. Hunt. On the 25th day of November, A. D. 1868, the governor of Louisiana issued the following certificate:

STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,  
New Orleans, November 25, 1868.

*To all to whom these presents may come:*

Know ye that, in accordance with the laws of the State of Louisiana, an election was held by the qualified electors of this State on the 3d day of November, A. D. 1868, for five members of Congress, to represent the first, second, third, fourth, and fifth congressional districts of the State of Louisiana in the forty-first Congress of the United



States, and for one member of Congress from the second congressional district to the fortieth Congress, to fill the vacancy occasioned by the death of the Hon. James Mann.

And whereas the returns of said election made to the secretary of state, as required by law, have been carefully examined, compared, and attested by the proper officers whose duty it was to examine the same;

And whereas it has been ascertained from said returns that Lionel Allen Sheldon received 5,103 votes, and Caleb S. Hunt 2,833 votes, cast at said election:

Now, therefore, I, Henry C. Warmoth, governor of the State of Louisiana, do hereby certify that Lionel Allen Sheldon received a majority of the votes cast for representatives to the forty-first Congress from the second congressional district of the State of Louisiana.

In testimony whereof I have hereunto set my hand and caused the seal of the State to be affixed this 5th day of November, in the year of our Lord 1868, and of the independence of the United States the ninety-third.

[SEAL.]

H. C. WARMOTH,  
Governor of the State of Louisiana.

GEO. E. BOVEE, *Secretary of State.*

The provision of law under which the governor acted in issuing the above certificate is section 30 of "An act relative to elections in the State of Louisiana, and to enforce article 103 of the constitution of the State," passed October 19, 1868; which section is as follows:

SEC. 30. *And be it further enacted, &c.,* That, as soon as possible after the expiration of the time of making the returns of election for representatives in Congress, the governor, jointly with the secretary of state and a judge of one of the district courts of the State, shall proceed to ascertain from the said returns the person duly elected, a certificate of which shall be entered on record by the secretary of state, and signed by the governor, and a copy thereof, subscribed as aforesaid, shall be delivered to the person so elected, and another copy transmitted to the House of Representatives of the Congress of the United States, directed to the Speaker thereof.

It will be seen that the law requires the governor, secretary of state, and a judge to ascertain from the returns the person *duly elected*, a certificate of *which* is to be signed by the governor. This provision is a re-enactment of the old law of the State on the subject, under which it was the practice of the governor, in the certificate, to state that the person to whom it was given had been "*duly elected*."

See the following precedent:

STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,  
New Orleans, November 18, 1865.

*To all to whom these presents shall come:*

Know ye that, whereas an election was held on the 6th day of November, 1865, according to law, for five representatives to the thirty-ninth Congress; and whereas the returns of said election have been duly made to the office of secretary of state, as required by law, and have been carefully examined, compared, and attested by the proper officers whose duty it was to examine the same; and whereas I have ascertained from said returns that John Ray has received a majority of the votes cast at said election in the fifth congressional district:

Now, therefore, I, J. Madison Wells, governor of the State of Louisiana, do hereby certify that John Ray was duly elected a member of the thirty-ninth Congress from the fifth congressional district of the State of Louisiana, and to serve until the end of the term of said Congress.

In testimony whereof I have hereunto set my hand and affixed the seal of the State on this, the eighteenth day of November, in the year of our Lord one thousand eight hundred and sixty-five, and in the year of the independence of the United States the ninetieth.

J. MADISON WELLS,  
Governor of Louisiana.

By the governor:

[SEAL.] S. WROTNOWSKI, *Secretary of State.*

If the case rested upon the certificate alone, the right of the holder to a seat might be questioned; but upon this point, which is involved in other cases not yet considered, the committee do not deem it necessary now to pass. By the official returns, as examined and certified



according to law, it appears that Lionel Allen Sheldon received 5,108 votes, and Caleb S. Hunt 2,833 votes, as shown by the following official statement:

The following is a true statement by parishes of the number of votes cast for member of Congress in the second congressional district, held November 3, 1868, as shown by the returns on file in the office of the secretary of state, together with the parishes rejected and reasons thereof:

Parishes.	Fortieth Congress.		Forty-first Congress.	
	Caleb S. Hunt.	J. W. Menard.	L. A. Sheldon.	Caleb S. Hunt.
Lafourche .....	1,799	1,613	1,613	1,799
St. Charles .....	264	1,335	1,335	264
St. James .....	770	2,160	2,160	770
Total .....	2,833	5,108	5,108	2,833

The returns from the following parishes were rejected:

Parishes.	Fortieth Congress.		Forty-first Congress.	
	Caleb S. Hunt.	J. W. Menard.	L. A. Sheldon.	Caleb S. Hunt.
Orleans .....	11,535	93	125	11,535
Terrebonne .....	1,297	1,541	1,541	1,297
St. John the Baptist .....	452	1,274	1,278	452
Jefferson .....	2,224	662	662	2,224
Total .....	15,508	3,570	3,606	15,508

#### PARISH OF ORLEANS.

The returns from that part of the parish of Orleans forming a part of the second congressional district were rejected for the reason that the returns were made by the boards of supervisors of registration appointed by authority of an act (No. 92) entitled "An act to facilitate the registry of voters under an act to create a board of registration to superintend the registration of the qualified voters of the State," approved September 7, 1868, said boards having no authority to perform any duties except that of registration, for which they were especially appointed.

#### JEFFERSON.

The returns from Jefferson parish were thrown out for the reason that two separate returns were received, one signed by S. S. Henry, as chairman board of supervisors at Carrollton, and the other by J. A. Wagner, H. P. Philips, John Payn, chairman, and J. H. A. Roberts, it being impossible to tell which, if either, was the correct return.

#### TERREBONNE.

The returns from this parish were made up and forwarded to the secretary of state by the commissioners of election appointed for the various polls, the only thing in



shape of a compilation being a statement showing the number of republican and democratic votes cast, signed by the supervisors.

ST. JOHN THE BAPTIST.

The returns from this parish being signed only by one of the members of the board of registration, and there being no witnesses' names signed thereto, was considered a violation of the twenty-fifth section of act No. 164. approved October 19, 1868, which requires the supervisors of election to repair to the court-house, and, in the presence of at least two witnesses, to compile the return sent in by commissioners. Section 25 makes it the duty of the supervisors to forward triplicate returns to the secretary of state, and no one supervisor has the right.

Mr. Hunt and Mr. Menard were opposing candidates to fill the unexpired term of Mr. Mann, (fortieth Congress.) Mr. Hunt and Mr. Sheldon were opposing candidates for the forty-first Congress. The vote for Mr. Hunt was the same for both terms.

H. C. WARMOTH, *Governor of Louisiana.*

A true copy:

[SEAL.]

GEO. E. BOVEE, *Secretary of State.*

Whatever might be the result of a contest involving the validity of these returns, and the sufficiency of the reasons assigned for rejecting the parishes which were rejected, the returns are to be received as *prima facie* evidence of the result of the election, and upon them Mr. Sheldon is entitled to take the seat, subject to any contest which may be lawfully made, unless he is disqualified or the election was void. It is not claimed, and there is nothing to show, that Mr. Sheldon is for any reason disqualified; but, on the contrary, it is admitted that he is a loyal man, and can, without mental reservation or evasion, take the oath prescribed by law. But the committee are instructed to inquire into the validity of the election.

The second congressional district of Louisiana is comprised of the First, Second, Third, Tenth, and Eleventh wards of the parish of Orleans, and the parishes of Jefferson, St. Charles, St. John the Baptist, St. James, Terrebonne, and Lafourche. From the official documents referred to the committee it does not appear that there was any serious disturbance of the peace at or about the time of this election in any parishes of this district excepting Orleans and Jefferson. In the city of New Orleans, and in Jefferson parish, which adjoins, and is practically part of the city, there was for about one week prior to and at the date of the election a reign of terror unsurpassed in the history of this country. The disloyal inhabitants, stimulated by the hope of reviving rebellion and regaining the lost cause, organized and armed, overcame the feeble resistance of the civil authorities, overawed the military commanders, and ran riot through the city, shooting down on sight and murdering in cold blood loyal citizens, white and colored, without offense or provocation, save those of loyalty and color.

By the official reports of the committee of the legislature of Louisiana, appointed to investigate the facts, it appears that in these two parishes 232 republicans were killed, shot, or otherwise maltreated—69 in Jefferson and 173 in Orleans.

This violence prevented nearly one-half the registered electors from voting. The registered vote in that part of the parish of Orleans included within the second district was 20,314; the vote cast was only 11,660—8,654 electors not voting. The registered vote in Jefferson parish was 5,969; the vote cast was only 2,886—3,083 electors not voting. The number of electors in the two parishes who did not vote was 11,737.

The following table shows the registry in the second district:

Orleans, ward one.....	3,130
Orleans, ward two.....	4,104



Orleans, ward three, front .....	2,568
Orleans, ward three, rear .....	4,449
Orleans, ward ten .....	3,278
Orleans, ward eleven .....	2,785
Jefferson .....	5,969
St. Charles .....	1,648
St. John Baptist .....	1,911
St. James .....	3,081
Terrebonne .....	3,279
Lafourche .....	3,570
Total .....	<u>39,772</u>

It is fair to presume that nearly all of these electors thus prevented from voting would have voted had there been a free and peaceable election, and that they would have voted against that disloyal party, which, by violence and intimidation, deprived them of their right, and in favor of the party of union and peace. And if they had so voted the republican ticket would have received in the entire district, of all the votes cast, a majority of about 1,500 votes.

It is evident, from the testimony referred to the committee, that in the parishes of Orleans and Jefferson there was no valid election, and the question arises whether this should invalidate the election in the other parishes of the district, and set aside the entire returns.

In all the other parishes the election was quiet, and the vote was as full as that usually cast in loyal States; and it would seem unreasonable and unjust that the peaceable electors of the district should be denied the right of representation because their violent neighbors attempted and failed to deprive them of that right.

The better rule would seem to be that indicated by the legislature of Louisiana, in the resolution referred to the committee, to exclude the disorderly and count the peaceable parishes; thereby defeating the violent and protecting the peaceable and law-abiding citizens in the right of representation.

If the vote of the lawless parishes alone be excluded, the result reached upon the official returns will not be substantially changed, except by increasing the majority for the candidate returned as elected.

The vote would then stand thus:

Sheldon .....	7,927
Hunt .....	<u>4,582</u>
Sheldon's majority .....	<u>3,345</u>

Your committee therefore recommends the adoption of the following resolution:

*Resolved*, That Lionel Allen Sheldon, claiming the right to represent the second congressional district of the State of Louisiana in the House of Representatives of the United States, be admitted to a seat in this House, without prejudice to the right of any person to contest such seat according to law.



## MINORITY REPORT.

Mr. Burr, on behalf of the undersigned members of the Committee of Elections, presented the following views of the minority :

The undersigned, being utterly unable to concur in the report of the majority of the Committee of Elections in the case of Caleb S. Hunt *vs.* L. A. Sheldon, from the second congressional district of Louisiana, respectfully submit the following reasons therefor :

## THE VOTE LEGALLY RETURNED.

The second congressional district comprised the first, second, third, and tenth representative districts of the parish of Orleans, on the left bank of Mississippi River, (being the First, Second, Third, Tenth, and Eleventh wards of the city of New Orleans,) and the parishes of Jefferson, St. Charles, St. John the Baptist, St. James, Lafourche, and Terrebonne.

At the election, Caleb S. Hunt and L. A. Sheldon were opposing candidates, and according to the returns made to the secretary of state, and on file in his office, the whole number of votes cast at said election in said second congressional district was 27,055, of which said candidates received respectively as follows, viz :

In parish of Orleans, Hunt, 11,535 ; Sheldon, 125.

In parish of Jefferson, Hunt, 2,224 ; Sheldon, 662.

In parish of St. Charles, Hunt, 264 ; Sheldon, 1,335.

In parish of St. John the Baptist, Hunt, 452 ; Sheldon, 1,278.

In parish of St. James, Hunt, 770 ; Sheldon, 2,160.

In parish of Lafourche, Hunt, 1,799 ; Sheldon 1,613.

In parish of Terrebonne, Hunt, 1,297 ; Sheldon, 1,541.

Total for Hunt, 18,341 ; total for Sheldon, 8,714.

On or about the 25th day of November, 1868, the governor of the State, the secretary of state, and a judge of one of the district courts of the State, (constituting a board of State canvassers,) proceeded to ascertain, from the returns of the election filed in the office of the secretary of state, the person duly elected representative from the said second district in the forty-first Congress ; and the said board rejected from computation the returns from four of the seven parishes embraced within the said second district, viz : Parishes of Orleans, Jefferson, St. John the Baptist, and Terrebonne.

The rejection from computation of the votes returned from the said parishes reduced the number of votes in said second district from 27,055 to 7,941, making 2,833 for Hunt and 5,108 for Sheldon, and resulting in an apparent majority of 2,275 votes for Sheldon ; and thereupon, in manifest fraud of the electors of the second congressional district and Mr. Hunt, the board of State canvassers declared that Lionel A. Sheldon had received a majority of the votes cast for representative in the forty-first Congress. A certificate of election was issued to him by the governor, under which he seeks to be admitted to take the seat he claims. This certificate is in substantially the usual form of such papers.

## THE CERTIFICATE OF FACTS TO MR. HUNT.

At or about the time the certificate of election was issued to Mr. Sheldon, the governor and secretary of state also issued and delivered to Mr. Hunt a certificate of the *facts*, with reference to the *law* and *construction* of law, on which the first certificate was based. That important paper, by order of the House, is before the committee, and reads as follows :

The following is a true statement by parishes of the number of votes cast for member



of Congress in the second congressional district, held November 3, 1868, as shown by the returns on file in the office of the secretary of state, together with the parishes rejected and reasons thereof:

Parishes.	L. A. Sheldon.	Caleb S. Hunt.
Lafourche .....	1,613	1,799
St. Charles .....	1,335	264
St. James .....	2,160	770
Total .....	5,108	2,833

The returns from the following parishes were rejected:

Parishes.	L. A. Sheldon.	Caleb S. Hunt.
Orleans .....	125	11,535
Terrebonne .....	1,541	1,297
St. John the Baptist .....	1,278	452
Jefferson .....	662	2,224
Total .....	3,606	15,508

#### PARISH OF NEW ORLEANS.

The returns from that part of the parish of Orleans forming a part of the second congressional district were rejected for the reason that the returns were made by the boards of supervisors of registration appointed by authority of an act (No. 92) entitled "An act to facilitate the registry of voters under an act to create a board of registration to superintend the registration of the qualified voters of the State," approved September 7, 1868, said boards having no authority to perform any duties except that of registration, for which they were especially appointed.

#### JEFFERSON.

The returns from Jefferson parish were thrown out for the reason that two separate returns were received, one signed by S. S. Henry as chairman board of supervisors at Carrollton, and the other by J. A. Wagner, H. P. Philips, John Payn, chairman, and J. H. A. Roberts, it being impossible to tell which, if either, was the correct return.

#### TERREBONNE.

The returns from this parish were made up and forwarded to the secretary of state by the commissioners of election appointed for the various polls, the only thing in shape of a compilation being a statement showing the number of republican and democratic votes cast, signed by the supervisors.

#### ST. JOHN THE BAPTIST.

The returns from this parish being signed by only one of the members of the board of registration, and there being no witnesses, names signed thereto, was considered a violation of the twenty-fifth section of act No. 164, approved October 19, 1868, which requires the supervisors of election to repair to the court-house, and, in the presence of at least two witnesses, to compile the return sent in by commissioners. Section 25



makes it the duty of the supervisors to forward triplicate returns to the secretary of state, and no one supervisor has the right.

Mr. Hunt and Mr. Sheldon were opposing candidates for the forty-first Congress.

H. C. WARMOTH,

*Governor of Louisiana.*

A true copy:

[SEAL.]

GEO. E. BOVEE,

*Secretary of State.*

This paper springs from the same fountain; is based upon and authorized by the same law; is executed by the same officers; relates to the same subject-matter; and declares certain facts in reference thereto, from which arise, by inevitable and logical implication, different legal results and conclusions from those promulgated in the certificate to Mr. Sheldon.

In all matters pertaining to the settlement or adjudication of contested elections, the House acts *judicially*, and not otherwise. Whenever any legal or official papers, executed in connection with such contests, and properly brought to the knowledge of the House, are based upon, or refer to, any general laws, State or federal, for the regulation of elections, it is the imperative duty of the House to take notice of all such laws. It is the conclusive presumption of law that the House is acquainted with them. If any action in connection with an election is based upon provisions or constructions of law, and not upon facts, the law needs not to be set out in the official paper based upon it, but the House must take judicial notice of it, and must be its own exclusive judge as to its interpretation. These rules are elementary and important, and apply with great propriety and force to this case.

#### WHY WAS THE VOTE IN THE PARISH OF ORLEANS REJECTED?

The reason assigned in the certified statement for the rejection of the vote of that parish, "that the returns were made by the board of supervisors of registration," shows either a total misapprehension or willful disregard of the express language of the law of the State on this subject. By the provisions of section 25, of act No. 164, Laws of Louisiana, 1868, page 223, it is expressly made the duty of the supervisors of registration in each parish to make out and forward said returns to the secretary of state. The section reads as follows:

SEC. 25. That it shall be the duty of said supervisors of registration in each parish to make out triplicate returns, to forward one of them immediately by mail to the secretary of state, and another to the secretary of state by the next most speedy mode of conveyance, and to deposit the third in the office of the clerk of the district court, and in the city of New Orleans in the office of the clerk of the first district court; and for their willful failure or neglect herein, such supervisors shall, upon conviction before any court of competent jurisdiction, be fined in a sum not exceeding \$500, at the discretion of the court.

Since the election, the State officers took the opinion of the attorney general of the State on this subject, and we will cite only the conclusion of it, which is entirely conclusive on this point, to wit:

I am, therefore, of the opinion, that the boards of supervisors of registration and election, as constituted under the laws, throughout the State, as well in New Orleans as other parishes of the State, are the proper returning officers.

I am yours, very respectfully,

SIMEON BELDEN,

*Attorney General.*

We assume, therefore, that the election returns from the parish of Orleans were in all respects legally returned and ought not to have been rejected.



But we submit, further, that every precinct that was rejected by the board of canvassers was rejected without authority of law; contrary to law; contrary to all the precedents that have governed cases of this kind in the past history of Congress. It is an established principle of law in cases of contested elections, not only in Congress, but in the States of this Union, that wherever there has been a neglect on the part of the returning officers or the canvassing officers to comply literally with the merely directory provisions of the statute, such neglect shall not work injury to anybody; that the votes shall be received and counted; that the parties shall have the benefit of them for whomsoever they are cast. In every case of contested elections the one great question to be determined, the one point of supreme importance to be ascertained by the House, sitting as judges, is, who has received the majority of votes of the legal electors of the district; whom do the people want to represent them; for whom have the majority of voters legally cast their votes? The fact that some officers may have made an artificial or somewhat informal return should not affect the substantial interests of the parties to that election.

In uniform harmony with these views there is a long and unbroken course of decisions both by this House and in all the courts of last resort in our country.

The effects of these numerous decisions is, to establish as the law of such cases that election statutes are to be tested like other statutes, but with a leaning to liberality, in view of the great public purposes which they accomplish; and, except where they specifically provide that a thing shall be done in the very manner indicated, and not otherwise, their provisions designed merely for the information and guidance of the officers must be regarded as directory only, and the election will not be defeated or affected by a failure to comply with them, provided the irregularity has not hindered any who were entitled from exercising the right of suffrage, or rendered doubtful the evidences from which the result was to be declared, or permitted disqualified voters to vote, and that the irregularity itself was not occasioned by the agency of a party seeking to derive a benefit from it. We refer on this general subject to some authorities in point: *People vs. Higgins*, 3 Mich., 233; *People vs. Cicotte*, 16 Mich., 283; *People vs. Cook*, 14 Barb., 259; *Clifton vs. Cook*, 7 Ala., 114; *Dishon vs. Smith*, 10 Iowa, 212; 4 Wis., 420; 19 Ind., 356; 2 Cal., 135; 34 Barb., 620; 43 Penn. St., 384.

The application of these settled principles to the conduct of the State officers in this case, in the rejection of certain returns, (and this application is perfectly admissible and legitimate in connection with any inquiry into the value of alleged *prima facie* title,) clearly demonstrates that every rejection so made, for the reasons stated, was made improperly and without authority of law.

#### WHO, THEN, HAS THE BEST PRIMA FACIE TITLE?

It is claimed by the majority that, upon the certificates, and the laws upon which they are based, Mr. Sheldon has the highest and clearest *prima facie* right to the seat. A brief examination will show the fallacy of this conclusion or assumption.

A *prima facie* right must be founded upon and established by *prima facie* evidence, and *prima facie* evidence is that evidence which is sufficient to establish the fact, unless rebutted. Now apply this definition to the case under consideration. Unless rebutted, the certificate which Mr. Sheldon holds is *prima facie* evidence: 1st. That an election was held at



the time, place, and for the purpose therein expressed; and, 2d. That he received the highest number of votes cast at the election, which necessarily constitutes his election, and thereby establishes *prima facie* his right, or, in other phrase, his *prima facie* right to be admitted to the seat. But his certificate or *prima facie* evidence is rebutted by a like official and authenticated statement of equal force, and showing also, 1st. That the election was held at the time, place, and for the purpose therein expressed; and, 2d. That Mr. Hunt received the highest number of votes cast at the election, and which necessarily constitutes his election, and thereby establishes *prima facie* his right to be admitted to the seat. Now what becomes of Mr. Sheldon's *prima facie* right? It falls, of course, unsustainable by *prima facie* evidence; and thus his claim is of no higher validity than Mr. Hunt's in a *prima facie* sense, and upon the form of the papers, and in substantial merits, as made manifest on the face of the certificates, it becomes utterly worthless and proves nothing to the advantage of Mr. Sheldon. The papers, taken together, establish the vital fact that *Sheldon is not elected, and that Hunt is elected by a triumphant majority of 9,627 votes.* Or, rejecting the parishes of Terrebonne, St. John the Baptist, and Jefferson, he is then elected by a majority of 9,135. This conclusive result is shown by the papers and the law alone, without any resort whatever to other evidence or sources of information. How is this result sought to be overcome? So far as this is attempted upon the face of the papers, it rests solely upon a legal quibble, an unsubstantial technicality, neither demanded nor justified by any principle of law. Its adoption by the House would do great injustice to Mr. Hunt, to the constituency in question, and would enable Mr. Sheldon to accomplish a manifest fraud and outrage, and violate the sacred right of representation in the person of the people's choice.

#### ALLEGED VIOLENCE IN THE PARISH OF ORLEANS.

The parties to this contest do not allege invalidity in the election by reason of the existence of violence, intimidation, terror, or anarchy. They specifically and emphatically *deny* all such charges. But the majority of the committee *assume* the existence of such a state of disorder as should invalidate the election in this parish. The certificates afford no support or countenance to this assumption. There is no *legal evidence* before the committee to establish it. But the majority seem to have borrowed their faith on this subject from a report made to the legislature of Louisiana by a committee of that body. That report is not properly or legally before the committee; and if it were, it does not contain legal evidence to be used in this contest, and in every respect it is intrinsically and notoriously unfit to be received; it is wholly *ex parte* and transparently and meanly partisan; and, judged by itself, it is unworthy of respect or belief.

But the majority, by a singular disregard of the appropriate limits of an inquiry into alleged *prima facie* titles, attempts, by a process of argument and comparison of party votes and strength at a preceding election, to deduce the legal conclusion that if all the legal votes in the parish of Orleans that were not cast had been cast at the congressional election in question, they would, *in fact*, have been cast for Mr. Sheldon; and that, therefore, he would have been elected, and ought now to be allowed to be sworn in as a member. They appear to have no doubt but that every man who did not vote wanted to vote for Mr. Sheldon; and that the House should now declare the result to be the same as if they had, in fact, all voted for Mr. Sheldon.



This sort of logic, or law, when indulged in by a committee charged with the delicate and important duty of deciding a great question of the right to representation, cannot be fitly characterized without appearing to violate the rules of parliamentary courtesy. In our judgment, it deserves to be signally rebuked by the House.

The undersigned therefore move to amend the resolution offered by the majority by substituting in it the name of Caleb S. Hunt for that of Lionel A. Sheldon, to the end that Mr. Hunt, the elected choice of an overwhelming majority of the legal voters of the district, may be allowed to occupy the seat to which he is elected, and that the contest may then proceed in order.

Respectfully submitted :

A. S. BURR.  
S. J. RANDALL.

---

### HOGGE vs. REED.

As in the *prima facie* case of Wallace vs. Simpson, two certificates were presented. The first signed was given to Reed, the second to Hogge. One of the board of canvassers withdrew his signature to the first certificate. It was held that the State canvassers can issue a second certificate, and Hogge was declared entitled to the seat. The House sustained the report by a two-thirds vote.

April 2, 1869.—Mr. Cessna, from the Committee of Elections, submitted the following report :

*In the matter of the claim of S. L. Hogge, claimant for a seat in the Forty-first Congress from the third district of South Carolina, Mr. Cessna, from the Committee of Elections, submitted the following report and resolution :*

The third congressional district of South Carolina is composed of the counties of Orangeburg, Richland, Edgeville, Lexington, Newberry, Abbeville, and Anderson. The election for members of Congress was held on the 3d day of November, 1868. The candidates for Congress were S. L. Hogge and J. P. Reed, and both presented their claims to the House, and are the claimants from the said third district of the said State, mentioned in the following resolution, referring the whole subject to this committee, viz :

*Resolved*, That the case of the claimants to seats in the House of Representatives of the forty-first Congress of the United States from the third and fourth congressional districts of the State of South Carolina, with the papers relating to the same, be referred to the Committee of Elections, when appointed, with instructions to report, as soon as practicable, which of the claimants, if either, are entitled to seats.

The committee first turned its attention to an allegation filed by S. L. Hogge, one of the claimants, that J. P. Reed, the other claimant, was ineligible, not being able to take the oath prescribed by the act of July 2, 1862. The committee found this allegation to be true, and so reported to the House. This disposed of Mr. Reed's claim, under the resolution of the House of March 22, 1869.

The resolution of reference being silent on the subject, the committee determined to inquire who had a *prima facie* right to the seat, leaving the merits open to such person as might desire to contest.

They found, among the papers referred, two certificates purporting to be certificates of election to Congress from the third district of South Carolina, which will be found in Appendix marked A and B.

One of these certificates was signed by three persons styling them-



selves canvassers for said State, and certifies that J. P. Reed was duly elected by a majority of votes in said third district.

The other certificate was signed by four persons styling themselves canvassers for the State, (three of the persons signing this being the same who signed the first-named certificate,) and certifies that S. L. Hoge was duly elected by a majority of the *legal* votes in said third district.

The phraseology of these certificates is somewhat different. In the certificate given to Reed, it is certified that he is duly elected by a majority of votes, while in the other it is certified that S. L. Hoge is duly elected by a majority of the *legal* votes of said district. It is evident, as will presently appear, that it was the intention of the canvassers to supersede, by the certificate given to Hoge, the one they had already given to Reed, and this accounts, no doubt, for the difference in the language used.

It appears, also, that one of the canvassers (J. L. Neagle) who signed the certificate of Reed, withdrew his signature to said certificate in the following language:

I therefore desire that the aforesaid certificate be considered as though my name was not attached, and this same certificate to have all the force of a certificate of the election of Hon. S. L. Hoge in full force and effect.

J. L. NEAGLE,

*Comptroller General South Carolina.*

This withdrawal leaves but two signatures to the certificate of Reed. This, according to the Statutes at Large of the State of South Carolina, (*vide* section 35,) invalidates the certificate, three canvassers being required to make a valid certificate. The question then arises, can the canvassers, after having given one certificate, withdraw their action and give another to a different party? This question was decided in the case of *Morton vs. Daily*, Bartlett's Contested Election Cases, page 403.

We think, also, that this decision can be sustained upon principle. The question is entirely within the control of the State canvassers or the governor of the State (as the case may be under the law) until the roll of the House is made up by the Clerk. There is no vested right, under a certificate, that would prevent the canvassers from rectifying any error or mistake that may have occurred in their deliberations or action, until the holder of the same has been awarded his seat by the Clerk of the House.

This principle is illustrated in the case of an attorney in fact; in which case, it is not doubted, the principal can withdraw or annul the power granted at any time before its purpose is executed.

Conceding, as a majority of the committee do, the right of these canvassers to reverse their first action in the premises and give a second certificate to Mr. S. L. Hoge, we do not think it necessary to examine the mass of testimony which seems to have been taken, upon due notice to the opposite party, but we append to this report the reasons given by the State canvassers for their action in this case. (*Vide* Appendix, marked C.)

The committee therefore recommend the following resolution:

*Resolved*, That, upon the papers referred to the Committee of Elections in the contested case of S. L. Hoge *vs.* J. P. Reed from the third congressional district of South Carolina, S. L. Hoge is *prima facie* entitled to a seat in the House as the representative of said district, subject to the future action of the House as to the merits of the case.



## APPENDIX A.

## THE STATE OF SOUTH CAROLINA.

*By the board of State canvassers.*

To Hon. S. L. HOGE:

Whereas, in pursuance of an act entitled "An act providing for the next general election and the manner of conducting the same," passed on the 26th day of September, A. D. 1868, an election has been held for a member of the forty-first Congress of the United States from the third congressional district of South Carolina, and upon examination of the returns which have been received, it appears that you, the said S. L. Hoge, have received a majority of legal votes; we do, therefore, by virtue of the powers in us vested, certify that you, the said S. L. Hoge, have been duly elected to represent the people of this State as a member of the forty-first Congress of the United States from the third congressional district of South Carolina, by a majority of all the legal votes cast at said election, held on the 3d day of November, A. D. 1868.

Given under our hands and the seal of the State, in Columbia, this 2d day of December, A. D. 1868, and in the ninety-third year of the independence of the United States of America.

F. L. CARDOZO, *Secretary of State,*  
NILES G. PARKER, *Treasurer,*  
J. L. NEAGLE, *Comptroller General,*  
DAN'L H. CHAMBERLAIN, *Att'y Gen.,*  
*Board of State Canvassers.*

[SEAL.]

ROBERT K. SCOTT,  
*Governor of South Carolina.*

## APPENDIX B.

## THE STATE OF SOUTH CAROLINA.

*By his excellency Robert K. Scott, governor and commander-in-chief in and over the State aforesaid.*

To J. P. REED:

Whereas, in pursuance of an act entitled "An act providing for the next general election, and the manner of conducting the same," passed on the 26th day of September, A. D. 1868, an election has been held for representatives in the forty-first Congress of the United States for the third congressional district, and upon examination of the returns which have been received it appears that you, the said J. P. Reed, have been duly elected by a majority of votes; I do, therefore, by virtue of the powers in me vested, commission you, the said J. P. Reed, to represent the people of this State as a member of the House of Representatives of the forty-first Congress of the United States; this commission to continue in force from the 4th March, 1869, to 4th March, 1871.

Given under my hand and the seal of the State, in Columbia, this 2d day of December, A. D. 1868, and in the ninety-third year of the independence of the United States of America.

[SEAL.]

ROBERT K. SCOTT.

By the Governor:

F. L. CARDOZO, *Secretary of State.*

## THE STATE OF SOUTH CAROLINA.

*By the board of State canvassers.*

To J. P. REED:

Whereas, in pursuance of an act entitled "An act providing for the next general election and the manner of conducting the same," passed on the 26th day of September, in the year of our Lord one thousand eight hundred and sixty-eight, an election has been held for a representative in the forty-first Congress of the United States for the third congressional district of the State of South Carolina, and upon examination of the returns which have been received, it appears that you, the said J. P. Reed, have been duly elected by a majority of votes; we do, therefore, by virtue of the powers in us vested, certify that you, the said J. P. Reed, have been duly elected to represent the people of this State as a member of the House of Representatives in the forty-first Congress of the United States.

Given under our hands and the seal of the State, in Columbia, this 2d day of December, A. D. 1868, and in the ninety-third year of the independence of the United States of America.

[SEAL.]

F. L. CARDOZO, *Secretary of State,*  
NILES G. PARKER, *Treasurer, S. C.,*  
J. L. NEAGLE, *Comptroller General,*  
*Board of State Canvassers.*



## APPENDIX C.

The board of State canvassers find, upon the evidence presented to them, that the election at which the said Reed appears to have been elected was accompanied by such grave and wide-spread disorder and outrages, on the part of the political friends of the said Reed, as in their judgment to make the apparent result different from the result which a free and orderly election would have secured.

In support of this opinion, the board of State canvassers call attention to the following facts, as gathered from evidence submitted to them in behalf of those who dispute the legality of the election of the said Reed.

It is known to the board of State canvassers that the party to whom the said Reed belongs, by the newspapers in their interest, by the voice of their public speakers, and by all the ordinary public agencies employed by political parties, did inaugurate and deliberately keep up a wholesale system of proscription, terrorism, and assassination, prior to the election of the 3d November, which prevented any considerable canvass of the third congressional district, which overawed vast numbers of republican voters, and prevented anything like a free expression of political opinion throughout the said district.

To establish these statements the board of State canvassers call attention to the affidavit of James H. Henderson, a member of the present house of representatives from Newberry County.

Mr. Henderson states that he is well acquainted with the people of Newberry County, and that he was personally cognizant of the circumstances attending the late election in this State; that he knows, of his own knowledge, that there was a systematic plan on the part of the democratic party to keep the colored voters from the polls; that violence was resorted to in order to keep them from the polls, or to drive them away if they came; that this condition of things extended over the entire county, and that this violence resulted in the death of many of the colored people in the county; that the democrats were thus enabled to prevent from voting at least fifteen hundred colored republican voters of this county alone, who would have voted for S. L. Hoge for Congress had they been allowed to do so; that during the campaign which preceded the election four colored men, citizens of Newberry County, were killed in cold blood, and two more shot and badly wounded, and some twenty or more severely whipped, some of them being so disabled as to be now almost helpless.

All of these acts, he avers, were committed by the democratic party for the sole purpose of intimidating and preventing from voting the colored republican voters of the county; that the democrats shot and killed Lee Nance, late a member of the constitutional convention, and a prominent member of the republican party, who had just been appointed one of the commissioners of elections for Newberry County; and that the death of Mr. Nance gave the democrats entire control of the board of commissioners of election of Newberry County, and, as a consequence, no republican manager of election was appointed in that county.

The board of State canvassers would also call attention to the affidavit of Henry Kennedy, a citizen of Anderson County and an officer of the general assembly of the State, who makes oath that during the late election armed bodies of white men patrolled Anderson County throughout, threatening violence to all who intended to vote for the republican candidate to Congress, and actually inflicting violence on many; that at least one thousand republican voters in Anderson County were kept from the polls by violence, all of whom would have voted for S. L. Hoge for Congress; that at Greenwood, a precinct of Anderson County, the man who carried the republican tickets was shot at, driven away from the polls, by white democrats, before he could distribute the tickets, by reason of which no republican tickets could be obtained for use in that precinct.

The affidavit of J. B. Hyde, a citizen of Lexington County, also states that threats and intimidations were used to such an extent as to deter a majority of the republican party from casting their votes at the late election, and that the entire republican vote would have been cast for S. L. Hoge had there been a fair election; that prior to the election threats of discharge from employment and shooting into the houses of colored people were continuously practiced, and that on the day of the election armed men were stationed at the polls with the avowed intention of shooting all prominent leaders of the republican party; and that in some instances republicans were fired upon by unknown parties; that nearly one thousand voters were, in the manner before stated, prevented from voting, a large majority of whom were republican voters, and would have voted for S. L. Hoge for representative in Congress.

The board of State canvassers especially call attention to the affidavit of Hutson J. Lomax, a citizen of Abbeville County, a member of the present general assembly of the State, and one of the commissioners of election for the county of Abbeville, who, upon oath, says that the total registered voters in Abbeville County are eighteen hundred whites and forty-two hundred colored voters, of which last number of colored voters only about eight hundred voted; at least thirty-two hundred of these colored voters



who did not vote would have voted for the republican candidate but from intimidation and violence practiced upon many of them by bodies of armed white men, who prevented many from going to the polls, and drove many from the polls with threats of death if they voted for the republican candidates, to the number of about thirty-two hundred.

At Moseley precinct, in aforesaid county, where, at the original registration, only about eighty-three voters were registered, and only a few voters' names were added at the revision of the registration, the democratic majority returned to the board of county canvassers was five hundred. At this same precinct (Moseley) a company of mounted men from Edgefield, armed to the teeth, came to the polling place, drove off all colored voters, and themselves all voted, to the number of about one hundred and fifty. This conduct continued all day, bodies of mounted men, non-residents of the county, continually arriving and voting, and using all manner of threats and violence against colored voters, members of the republican party, to prevent their voting the republican ticket, and did prevent them from so doing.

At Whitehall precinct, in aforesaid county, bands of armed white men, members of the democratic party, drove from the polls all colored voters, allowing no man to vote unless he voted the democratic ticket, threatening that republican voters would be shot down at the box where the votes were deposited, and actually killed one colored man, mortally wounded another, and shot six more colored persons, wounding them, all members of the republican party.

At Calhoun Mills precinct, in said county, colored men were driven away from the polls by armed white men, one colored man, a member of the republican party, being shot in the shoulder. Similar intimidations and violence were practiced at the various other precincts in the county. Many colored voters were made, through intimidation and fears of violence, to vote the democratic ticket. Not a single colored voter, nor a single member of the republican party, was appointed manager of election in said county; and upon deponent's advising, in his capacity of commissioner of election, the appointment of some colored persons as managers of elections, the other commissioners refused to appoint any colored men, and said to him that if it was known that he, the deponent, had advised it, he would be shot down in the street by white democrats. I believe, and am informed, that if a fair election had been held in said county, at least thirty-two hundred republican voters would have voted, and voted for S. L. Hoge for Congress, who were actually deterred from voting by violence.

All of the foregoing facts testified to occurred at the election held for presidential electors, and for member of Congress, in Abbeville County, on the 3d day of November, A. D. 1868; and a systematic attempt to overawe and intimidate voters had been practiced in said county for two months preceding the said 3d of November, 1868.

It will be perceived that the foregoing evidence discloses a wide-spread and organized system of terrorism and violence of all kinds, extending even to murder and assassination, with the obvious design on the part of the democratic party of preventing the republican voters, and more especially the colored republican voters, from expressing their political preferences at the polls.

The evidence also establishes the very important fact that more than voters enough to have elected S. L. Hoge, the republican candidate for representative in Congress for the third congressional district, were deterred from voting by this series of outrages, this constant intimidation and personal violence.

If, now, there be added to all this the facts, which are known to the board of State canvassers, that no election could be had in the county of Edgefield, which forms a part of the third congressional district; and that on the day of the election probably not less than fifteen hundred or two thousand white men, democrats, crossed over into the adjoining counties in the third congressional district, and there, regardless of all law or order, deposited their votes for the democratic candidate, we have a case which, upon its real and substantial merits, warrants the board of State canvassers in saying deliberately and unhesitatingly that, in their judgment, J. P. Reed is not justly entitled to his seat in the Congress of the United States; but the returns of the election, when sifted and scrutinized by any body having jurisdiction of the whole matter, will lead to the conclusion that S. L. Hoge is the properly elected representative of the third congressional district, and ought to be so recognized.

Abundant and conclusive evidence of the facts and views above stated will be in due time presented to the Congress of the United States; but the board of State canvassers, having felt compelled, for want of jurisdiction, to issue a certificate of election to J. P. Reed, desired that no undue force should be attached to that certificate, but that their views of the whole case should be fully stated and explained.

In their official capacity as canvassers, in their private capacities as citizens and voters, as friends of order, and public morality and decency, they solemnly avow their belief that the election of J. P. Reed was a monstrous outrage, a ghastly triumph, whose price was treachery, violence, assassination, and murder.

The board of State canvassers, in view of the present condition of the State, of the personal danger attendant upon any investigation, or the production of evidence, in



this case, respectfully urge and recommend that some special measures be adopted by the House of Representatives to conduct a thorough investigation of this case, and that the aid of the military forces of the United States be allowed to aid and assist in this investigation.

F. L. CARDOZO, *Secretary of State*,  
NILES G. PARKER, *Treasurer*,  
D. H. CHAMBERLAIN, *Attorney General*,  
*Board of State Canvassers of South Carolina.*

---

I, J. L. Neagle, comptroller general of the State of South Carolina and *ex officio* member of the board of State canvassers, do fully indorse the facts set forth in the above statement; and desire to say further, that I did sign my name to the certificate of election in the case of J. P. Reed under protest, believing and knowing that every vote cast for the said J. P. Reed was illegal, and at the time being overruled by the counsel of others in my own conviction that the board of State canvassers were both judges of the legality of the votes cast, as well as the mere number thereof; that J. P. Reed was the candidate of a revolutionary party, who went into the canvass with rifle in hand to win his election by the murder and assassination of peaceable and unoffending citizens; that in Abbeville County, during said canvass, within said third congressional district, honorables J. M. Martin and B. F. Randolph, and many colored men of said county, were most foully and brutally murdered by those same rebel ruffians who were opposing the election of Hon. S. L. Hoge, and pressing with their bloody hands the claims of the said J. P. Reed.

I therefore desire that the aforesaid certificate be considered as though my name was not attached, and this same certificate to have all the force of a certificate of the election of Hon. S. L. Hoge, in full form and effect.

J. L. NEAGLE,  
*Comptroller General, South Carolina.*

---

#### MINORITY REPORT.

April 3, 1869.—Mr. Burr, in behalf of himself and Mr. Randall, from the Committee of Elections, presented the following views of the minority:

The undersigned, constituting a minority of the Committee of Elections, being unable to agree with the majority in their conclusions concerning the right to a seat from the third district of South Carolina, ask leave to present the following reasons for their dissent:

The election was held on the third of November, 1868. The only candidates appearing to have been voted for were J. P. Reed and S. L. Hoge, each of whom claims the seat, and each presents record evidence in support of his claim.

While the cases were so before the committee, but as yet not investigated, the House by resolution instructed the committee to institute an investigation in all such upon a preliminary question in cases where the question might be put in issue before the committee. That resolution is as follows:

*House resolution adopted March 22, 1869.*

*Resolved*, That in all contested election cases referred to the Committee of Elections, in which it shall be alleged by a party to the case, or a member of the House, that either claimant is unable to take the oath prescribed in the act approved July 2, 1862, entitled "An act to prescribe an oath of office, and for other purposes," it shall be the duty of the committee to ascertain whether such disability exists; and if such disability shall be found to exist the committee shall so report to the House, and shall not further consider the claim of the person so disqualified without the further order of the House; and no compensation will be allowed by the House to any claimant



who shall have been ineligible to the office of representative to Congress at the time of the election, and whose disability shall not have been removed by act of Congress.

Under that resolution the eligibility of one of the claimants, J. P. Reed, was put in issue, and the committee unanimously reported to the House that, by the statements of the party himself and his express admissions, he was, under the third section of article 14, ineligible to the seat. That report was accompanied by a joint resolution, sanctioned by a minority of the committee, proposing to remove the disabilities; and thus the claim of J. P. Reed to the seat is, for the time being, suspended by direction of the House. Yet, although we may not consider his papers in support of his own claim, until he shall have been relieved of disabilities, we may and must consider his papers, in order to determine whether the papers relied upon by his competitor show upon the face superior title to the seat in dispute. But, as a standard by which to judge the legal sufficiency of given papers, the following points are presented, as embodied in the general election laws of South Carolina, passed September 26, 1868.

After providing for certifying the returns from precincts to counties and from counties to the governor, secretary of state, and comptroller general, the law provides as follows:

SEC. 35. The secretary of state, comptroller general, attorney general, and treasurer shall constitute the State canvassers, three of whom shall be a sufficient number to form a board.

The next section provides for filling any vacancy that may exist in the board where a majority may fail to appear; and the succeeding sections define the duties of the canvassers and of the secretary of state as follows:

XXXVII. The board when thus formed shall, upon the certified copies of the statements made by the boards of canvassers, proceed to make a statement of the whole number of votes given at such election for the various offices, and each of them voted for, distinguishing the several counties in which they were given. They shall certify such statements to be correct, and subscribe the same with their proper names.

XXXVIII. Upon such statements they shall then proceed to determine and declare what persons have been, by the greatest number of votes, duly elected to such offices, or either of them.

XXXIX. They shall make and subscribe, on the proper statement, a certificate of such determination, and shall deliver the same to the secretary of state.

XL. The board shall have the power to adjourn, from day to day, for a term not exceeding five days.

XLI. The secretary of state shall record in his office, in a book to be kept by him for that purpose, each certified statement and determination which shall be delivered to him by the board of State canvassers, and every dissent or protest that shall have been delivered to him by a canvasser.

XLII. He shall, without delay, transmit a copy, under the seal of his office, of such certified determination to each person thereby declared to be elected, and a like copy to the governor.

XLIII. He shall cause a copy of such certified statements and determinations to be printed in one or more of the public newspapers in each county if any shall be published therein.

XLIV. He shall prepare a general certificate, under the seal of the State, and attested by him as secretary thereof, addressed to the House of Representatives of the United States in that Congress for which any person shall have been chosen, of the due election of the persons so chosen at such election as representatives of this State in Congress, and shall transmit the same to the said House of Representatives at their first meeting.

With these provisions of law before us, let us recur to the papers presented by the parties claiming the *prima facie* right. And first in order of execution, the "certificate" of the determination reached by the board as to "what persons have been, by the greatest number of votes, duly elected to such offices." That certificate as published by the secretary of state, in obedience to section 43—it being the only certificates published



or even issued under the law—is as follows so far as relates to this particular district:

THE STATE OF SOUTH CAROLINA.

*By the board of State canvassers.*

Whereas (here follows a recitation of statutes aforesaid, as also of the holding of an election for various officers and the returns received,) and upon examination of the returns received it appears that (here follow names of parties elected to offices, including representatives from the first and second districts, and therein) Hon. J. P. Reed, representative of the third congressional district, (here follow names of parties elected in other districts,) have been duly elected, by a majority of votes, representatives to the forty-first Congress of the United States.

\* \* \* \* \*

The concluding portion of this certificate is as follows:

We do, therefore, by virtue of the powers in us vested, certify and declare that the above-named parties have been duly elected to fill the various offices referred to.

Given under our hands and the seal of the State, in the city of Columbia, this 1st day of December, in the year of our Lord 1868, and in the ninety-third year of the independence of the United States.

F. L. CARDOZO, *Secretary of State,*  
NILES G. PARKER, *Treasurer South Carolina,*  
J. L. NEAGLE, *Comptroller General,*  
DAN'L H. CHAMBERLAIN, *Attorney General,*  
*Board of State Canvassers.*

This certificate appears in the Daily Phenix, published at Columbia, South Carolina, Saturday morning, December 5, 1868; and in the same paper, now in the hands of the committee by reference from the House, is the statement from the board required by section 37:

A statement of the whole number of votes given at such election for the various offices, and each of them voted for, distinguishing the several counties in which they were given. They shall certify such statement to be correct, and subscribe the same with their proper names.

That statement is as follows:

The following is the official vote, by counties, with the exception of Edgefield, where there was no election:

Third congressional district.	J. P. Reed.	S. L. Hoge.
Orangeburgh .....	1, 976	3, 085
Lexington .....	1, 568	830
Richland .....	384	2, 452
Newberry .....	1, 986	931
Abbeville .....	2, 753	830
Anderson .....	2, 107	638
Total .....	11, 774	8, 766

We certify the above statement to be correct.

F. L. CARDOZO, *Secretary of State,*  
NILES G. PARKER, *Treasurer South Carolina,*  
J. L. NEAGLE, *Comptroller General,*  
DAN'L H. CHAMBERLAIN, *Attorney General,*  
*Board of State Canvassers.*

This last statement was published also in the Phenix of December 5—of the same date as the preceding documents—indeed, they were but separate parts of the same publication bearing date December 1, 1868. On December 2 the board of State canvassers executed their certificate as required by section 38, and the secretary of state on the same day executed to each of the parties named in the several districts the certi-



fied copy of such statement required by section 42, which certified copy for the third district is, in its commencement, as follows: "By the board of State canvassers. [Seal.] To J. P. Reed."

After then reciting the laws and the election it declares or certifies J. P. Reed to "have been duly elected by a majority of votes," which document is officially signed by all the board of State canvassers except the attorney general.

Based upon this declaration of the State canvassers is a commission in the following form:

THE STATE OF SOUTH CAROLINA.

[SEAL.]

*By his excellency Robert K. Scott, governor and commander-in-chief in and over the State aforesaid.*

To J. P. REED:

Whereas, in pursuance of an act entitled "An act providing for the next general election, and the manner of conducting the same," passed on the 26th day of September, in the year of our Lord 1868, an election has been held for representative in the forty-first Congress of the United States for the third congressional district, and upon the examination of the returns which have been received it appears that you, the said J. P. Reed, have been duly elected by a majority of votes: I do therefore, by virtue of the powers in me vested, commission you, the said J. P. Reed, to represent the people of this State as a member of the House of Representatives of the forty-first Congress of the United States. This commission to continue in force from the 4th of March, 1869, to 4th March, 1871.

Given under my hand and the seal of the State in Columbia, this 2d day of December, in the year of our Lord 1868, and in the ninety-third year of the independence of the United States of America.

ROBERT K. SCOTT.

By the governor:

F. L. CARDOZO,  
*Secretary of State.*

These are the papers primarily relied on by Mr. Reed; now for the exhibits in favor of Mr. Hoge. The only papers in support of his *prima facie* claim are, first, a certificate by the board of State canvassers, purporting to have been executed on the same day as that held by Mr. Reed; and, second, a separate "statement of the board of State canvassers of South Carolina in the case of the election of J. P. Reed." Let us consider the certificate first. It differs from that held by Mr. Reed only in three particulars, and need not therefore be set out here, except so far as the difference is to be considered. Reed's certificate declares him to "have been duly elected by a majority of votes." Hoge's declares him to "have received a majority of legal votes." The next point of difference is that Hoge's paper bears the signature of Daniel H. Chamberlain, attorney general, in addition to the names of State canvassers signing Reed's; and last, the paper presented by Hoge bears to the left of the official signatures of the canvassers the words, "Robert K. Scott, governor of South Carolina."

Before considering the "statement," let us refer to each of these points of difference in the certificates. The requirement of the law of South Carolina (sec. 38) upon the canvassers is, "shall determine and declare what persons have been, by the greatest number of votes, duly elected." Reed's paper says, "have been duly elected by a majority of votes." Hoge's says, "have received a majority of legal votes." In view of the requirements of this section, Reed's paper is a strict compliance with the statute; Hoge's a departure from the text, and lack of compliance with its terms. As to the next point of difference in the fact that the attorney general signs Hoge's paper and not Reed's, either paper is in that regard a compliance with the law, (sec. 35,) for by it any three of the canvassers constitute a board. And last, as to the name of Gov-



ernor Scott appearing on the left of Hoge's paper, as no section of the law requires him to execute or attest such a paper, it is of none effect on the one, nor is its lack in any degree significant in the other. These are all the differences on the faces of the papers so far. Hoge presents no commission by the governor, which Reed does. Hoge shows no published certificate of the result in his favor, as required by section 43, while Reed shows strict compliance with that section.

Let us now determine as to the priority of certificates and the reason prompting the canvassers to execute two. Each certificate is on its face dated December 2, 1868, but there is conclusive evidence on the face of the papers before us, showing that Hoge's certificate, purporting to have been executed December 2, was, in point of fact, executed at a period many days subsequent to that time. The newspaper before the committee, containing the publication made by the board, is dated December 5, and in it they state that Reed was elected, which, though the statement is itself dated December 1, they would hardly have permitted if they had, before the 5th, reviewed their first act, and determined a different result. But still stronger evidence to show the fact that Hoge's certificate was not made on the day it bears date, is the testimony of his notice of contest served upon Reed. It is dated December 28, in 1868, and was served on Reed, January 2, 1869, just one month later than his certificate purports to have been executed. Does any one suppose he would have commenced a contest and served papers on January 2, if he held then a certificate of his election honestly made and delivered one month before that time? But still stronger evidence, if possible, is found by a comparison of several papers together as they are furnished by Hoge himself. Great stress is laid on the statement of the board of State canvassers of South Carolina by the majority of the committee. What is the subject of that statement? In its caption they say it is made "in the case of the election of J. P. Reed." They say nothing of the assured election of Hoge in the caption. The first sentence in that statement is an admission that at the date of its execution Reed was considered as elected, and Hoge not in possession of any evidence of title to a seat, except such as every contestant may make for himself in a notice. That sentence is as follows:

*To the House of Representatives of the Congress of the United States :*

The board of State canvassers, in the discharge of the duties imposed on them by law, have felt compelled to declare upon *prima facie* evidence, that J. P. Reed has been elected to the forty-first Congress of the United States as the representative of the third congressional district of the State of South Carolina.

If that admission be not sufficient proof that they considered Reed as the only party entitled *prima facie* to the seat, what could be? They admit that they had accredited him as the party elected, and at the time of signing that "statement" had made no other certificate. Now, what is the date of that paper? Nowhere on its face does a date appear! Strange omission! A document paraded as a state paper and relied upon to settle rights, both public and private, without any date, when the question of date is so material as in this case? By technical rules this defect would be regarded as an admission of the party producing the paper, and would authorize the conclusion that its date would, if given, damage the interest it was intended to subserve. But no such implied admission is needed to fix the date as being subsequent to December 2, for in this "statement" the parties signing it professedly as a "board" use this language:

The board of State canvassers call attention to the affidavit of James H. Henderson, a member of the present House of Representatives from Newberry County.



Now, of course, this "statement" was executed at a period of time later than the affidavit to which it refers, and the jurat to that affidavit is "sworn to before me this 8th day of December, A. D. 1868."

So the published certificate in the paper, the notice of contest, the statement by the canvassers, and the affidavit referred to by them, all unite in declaring that Hoge's certificate of election was made long subsequent to the day appearing on its face as its true date, and thus the "presumption of regularity" relied on by the majority is destroyed, and the only evidence of title shown by Hoge is impeached before the House.

But can a board of canvassers undo their official act, and perform another at a later date inconsistent with the first? Inasmuch as this same question is involved in modified forms in various other cases before the committee, it will only be considered here so far as is necessary to the correct decision of this case. Let it be remembered that by the law of South Carolina the canvassers are not only required to "make a statement of the whole number of votes given at such election for the various officers," and "certify such statements to be correct, and subscribe the same with their proper names," but shall, "*upon such statements*," proceed to "determine and declare what persons have been by the greatest number of votes duly elected," and "shall make and subscribe on the proper statement a certificate of such determination, and shall deliver the same to the secretary of state." Here are several successive official acts required, each in turn deriving its authenticity from the due performance of the act preceding in the series. First of all is the making of a "statement" of the number of votes, and parties receiving them for various officers, which must be certified and subscribed by their proper names. This foundation was laid in the paper dated December 1, 1868. All other later acts are based on that. Upon that is based the determination and declaration "what persons have been by the greatest number of votes duly elected." That was done in Reed's paper of December 2, corresponding with the preceding statement of December 1, while the paper of Hoge is a departure from the preceding official acts, and therefore could have no legal value, even if of honest date.

But, in addition, even if a public officer or a board of officers may annul an official act, and, by subsequent determination, move in a different direction, there must of course be a period of time, or a point in the series of acts dependent upon each other, beyond which no such discretionary power could be exercised. As to time, let it be remembered they commenced their work as a board as early as December 1, for that is the date of their first official paper. How long, then, may they continue to act; or, in other words, what is their official term? Section 40 says:

The board shall have the power to adjourn from day to day, for a term not exceeding five days.

Then, measured by time, all their official acts must be performed within the term of five days. But as to power, regardless of time, we deem the true rule to be that when an official act is in itself completed, and other subsequent official acts of the same or other officer has been based upon such completed act, it may not be retracted.

The majority are understood to hold that the statement, without date, by Cardozo, Parker, and Chamberlain amounts to an official recantation of their official act of December 1, upon which act have since been based—

First. A public statement.

Second. A certificate to the party.



Third. A commission by the governor.

We submit that, both by lapse of time and force of subsequent official action, these men were barred from recantation even if on any showing they might exercise it. This view, if correct, disposes of the argument that Neagle might retract, for if three together may not, of course one cannot.

But it is assumed that these "canvassers" were intimidated and under duress when they first acted. Where is the proof? The opening statement heretofore quoted, that they "have felt compelled to declare!" Compelled by what? Intimidation? Violence? Threats? This is mere pettifogging. Could not the same force that "compelled" the first act prevent the publication of this "statement?" That sentence merely says that a strict discharge of official duties under the law compels certain action on their parts, which is a declaration that Reed and not Hoge has *prima facie* right to the seat; and they then say what they think will be found to be the relative rights of the parties on final hearing of the case on its merits. So far as this paper is a "protest," or that of Nagle a "dissent," the law of South Carolina provides for its reception by the secretary of state, in whose office it shall be recorded in a book kept for the purpose, but in no section is found authority for an act of revocation, or a paper annulling a preceding official deed.

But this statement of the canvassers not only does not assert *prima facie* right in Hoge, but expressly states that he received a minority of votes, for in it they base Hoge's ultimate right on Reed's ineligibility. They do not reverse the final decision as to the *prima facie* case, but admit and affirm it, declaring, however, their view of final rights or merits as follows:

The board of State canvassers, while not deeming themselves competent to give final judgment upon the question herein involved, do submit that if such disqualification in fact exists, then the election of the said Reed is wholly illegal and void; and that in consequence thereof, S. L. Hoge, who received the next highest number of votes, is lawfully entitled to the seat as representative of the third congressional district aforesaid.

S. L. Hoge they say "received the next highest number of votes." Next to whom? J. P. Reed; and "if Reed is disqualified, then his election is illegal and void;" and, in their judgment, as a result "in consequence thereof, S. L. Hoge, who received the next highest number of votes," ought to be admitted. Suppose Reed were not disqualified? Then his election would not be illegal and void, and Hoge would have no claim, *prima facie* or otherwise, to a seat here. Now, if the House is ready to adopt this theory, that the disqualification of Reed elects Hoge by a majority vote, so let it be. In so doing it will reverse its own decision in the preceding Congresses, admit its error in the case of Brown and ———, from Kentucky, in the last Congress, place majorities in control of minorities, and in advance sanction party intrigue and official misconduct in suppressing the popular will.

For reasons imperfectly given above we dissent from the majority and offer as a substitute for their resolution the following:

*Resolved*, That J. P. Reed is not entitled, under resolution of March, 1869, to a seat from the third district of South Carolina, by reason of ineligibility, and that S. L. Hoge is not entitled to such seat, because he was not "by the greatest number of votes duly elected" by the people of that district.

ALBERT G. BURR.  
SAMUEL J. RANDALL.



## WALLACE vs. SIMPSON.

The general certificate required by law was absent, but each of the parties presented a particular certificate, essentially alike; the board of State canvassers sent a statement to the House that the first certificate (Simpson's) was given simply to comply with the law, but that in their opinion Wallace was elected. Held, that Wallace was *prima facie* entitled to the seat.

A certificate is *evidence* of a fact, but does not make the fact; it does not add to the right of representing a constituency.

The House (January 25, 1870) adopted the resolution of the *minority* as an amendment to the majority resolutions, (103 to 73,) and then, *nem. con.*, recommitted the case for investigation on the merits.

April 5, 1869.—Mr. Burdett, from the Committee of Elections, made the following report:

*The Committee of Elections, to which was referred, by the resolution of the House of March 9, 1869, the case of the claimants to seats in the House of Representatives of the forty-first Congress of the United States from the third and fourth congressional districts of the State of South Carolina, with the papers relating to the same, and with instructions to report as soon as practicable which of the claimants, if either, are entitled to seats, submits the following report:*

The claimants to a seat in the forty-first Congress from the fourth congressional district of South Carolina were, at the date of the said House resolution of the 9th of March, A. S. Wallace and William D. Simpson. By the operation of House resolution adopted March 22; 1869, the committee are relieved from any affirmative consideration of the claims of the said Simpson, since it is ascertained that said Simpson is unable to take the oath prescribed in the act approved July 2, 1862, entitled "An act to prescribe an oath of office and for other purposes;" but while a majority of the committee are of opinion that in such cases votes cast for candidates so ineligible ought not to be counted or regarded as votes, and that sound policy and especially the interests of loyalty, law, and order would be subserved by adopting a rule that votes cast for an opposing candidate or candidates who were qualified in the sense of eligibility, should be counted as the only votes legally polled, yet understanding that an opposite theory has been actually adopted and acted upon by the House in cases heretofore acted upon, involving this identical question, they feel bound to consider the question now in hearing under that rule, and try the claims of Mr. Wallace in exactly the same manner as though there stood in the place of William D. Simpson a claimant of unquestioned eligibility.

By the laws of the State of South Carolina it is provided that, (Statutes at Large, page 140, sec. 34,)

The secretary of State shall appoint a meeting of the State canvassers to be held at his office, or some convenient place, on or before the 15th day of December next, after such (each) general election, for the purpose of canvassing the votes of all officers voted for at such election. \* \* \* \* \*

SEC. 35. The secretary of state, comptroller general, attorney general, and treasurer, shall constitute the State canvassers, three of whom shall be a sufficient number to form a board. \* \* \* \* \*

SEC. 37. The board, when thus formed, shall, upon the certified copies of the statements made by the board of county canvassers, proceed to make a statement of the whole number of votes given at such election for the various offices, and each of them voted for, distinguishing the various counties in which they were given. They



shall certify such statements to be correct, and subscribe the same with their proper names.

SEC. 38. Upon such statements, they shall then proceed to determine and declare what persons have been by the greatest number of votes duly elected to such offices or either of them.

SEC. 39. They shall make and subscribe on the proper statement a certificate of such determination, and shall deliver the same to the secretary of state.

SEC. 42. He shall, without delay, transmit a copy, under the seal of his office, of such certified determination to each person thereby declared to be elected, and a like copy to the governor.

And by section 44 of the same act it is required of the secretary that—

He shall prepare a general certificate under the seal of the State, and attested by him as secretary thereof, addressed to the House of Representatives of the United States in that Congress for which any person shall have been chosen, of the due election of the persons so chosen at such election as representatives of this State in Congress, and shall transmit the same to the said House of Representatives at their first meeting.

From the official papers and evidence referred by the House, it sufficiently appears that the said board of State canvassers, provided for in section No. 35, above quoted, met at the time and place prescribed by law and performed the duties devolved on them by sections 37, 38, and 39 of said act; and that the secretary of state thereon performed the duties prescribed for him by section 42 of the said act, viz., that he transmitted a copy, under the seal of his office, of the certified determination of the board of canvassers to each person thereby declared to have been elected, and a like copy to the governor; but it does not appear that he ever prepared or forwarded to the House of Representatives the general certificate provided for by section 44 of that act. This *general certificate* so provided for was evidently intended by the law-making power of that State to be the primal evidence of right to a seat in this House, furnished by the authorities of that State to her elected citizens; and in the settlement of *prima facie* rights would (if unimpeached) be the highest evidence.

Why this certificate, so clearly provided for, has been withheld does not appear. Its presence might, and probably would, have saved any question or cavil on the question of the *prima facie* right to the seat now under discussion as well as in another case of a similar character arising in that State; but since that general certificate is, in fact, but a transcript of the "*certified determination*" of the board of canvassers, provided for in section 42, and since that paper, duly executed and authenticated, is produced, the committee are of opinion that the absence of the general certificate should not prejudice the claims of the district to representation, since a contrary view might result in blotting out a whole constituency for a congressional term for the mere neglect of a State official.

Having thus sketched the general situation of the question, the committee are brought to a particular statement and decision of the facts and questions devolved upon them by the resolution of the House.

As before recited, the board of State canvassers did make and certify a "*determination*" as to the result of the election in the fourth congressional district of South Carolina, and a copy duly certified was transmitted, not, however, to a single person, but such certified determination was transmitted and actually delivered, and is held both by A. S. Wallace and by William D. Simpson, each dated on the same day, (December 2, 1869,) each signed in due form by a quorum of the board, substantially, and even technically, conforming to the requirements of the law in their recitals, and only differing from each other in important verbal modifications, so that each standing alone would be amply sufficient for the purposes of its issue. There is no claim or pretense



of want of genuineness in either; there is neither forgery nor mistake alleged or supposable. The reasons for this unusual state of facts are to be found in the explanations of the officers so doubly certifying, and are found among the papers referred to the committee, and are thus stated:

*Statement of the board of State canvassers of South Carolina, in the case of the election of William D. Simpson.*

*To the House of Representatives of the United States:*

The board of State canvassers, in the discharge of the duties imposed upon them by law, have felt compelled to declare, upon the return of the commissioners of election, that William D. Simpson has been *prima facie* elected to the forty-first Congress of the United States as the representative of the fourth congressional district of the State of South Carolina. They do not, however, feel that their whole duty will be discharged without a full statement of the views which they entertain of the actual and substantial merits of the claims of the said Simpson to his seat. They therefore, in the discharge of what they deem their imperative duty, make the following statement of facts connected with the case, with a view of conducing to a proper decision of the case when submitted to your honorable body, which is to render final judgment in the case.

This board do find, upon the evidence before them, that the said William D. Simpson was, in the year 1858, duly elected to the legislature of the State of South Carolina for the term of two years, and did take his seat and serve as a member of the said legislature, taking an oath, as such member, to support the Constitution of the United States, as appears from the legislative journals. That subsequently, in the year 1860, the said William D. Simpson was duly elected and served as a member of the legislature that called the convention, to frame the ordinance of secession for the said State of South Carolina, and did vote for the calling of such convention. That subsequently, in the year of 1861, the said Simpson voluntarily entered the army of the so-called Confederate States of America as a commissioned officer in the same, and that subsequently, in the year 1863, he was duly elected and qualified as a member of the congress of the so-called Confederate States of America. These facts, the board of State canvassers cannot doubt, disqualify the said Simpson from holding the office of a representative in the House of Representatives of the Congress of the United States, under the Constitution of the United States.

The board of State canvassers, while not deeming themselves legally competent to give final judgment upon the question therein involved, do submit that if such disqualification in fact exists, then the election of the said Simpson is wholly illegal and void, and that in consequence thereof A. S. Wallace, who received the next highest number of votes, is lawfully entitled to the seat as representative in the fourth congressional district aforesaid. The board of State canvassers further find, upon the evidence presented to them, that the election at which the said Simpson appears to have been elected was accompanied by such grave and widespread disorder and outrages on the part of the political friends of the said Simpson as in their judgment to make the apparent result different from the result which a free and orderly election would have secured.

In support of this opinion the board of State canvassers call attention to the following facts, as gathered from evidence submitted to them in behalf of those who dispute the legality of the election of the said Simpson: It is known to the board of State canvassers that the party to whom the said Simpson belongs, by the newspapers in their interest, and by the voice of their public speakers, did inaugurate and deliberately keep up a wholesale system of proscription, terrorism, and assassination prior to the election on the 3d day of November last, which prevented any considerable canvass of the fourth congressional district, which over-awed vast numbers of republican voters, and prevented anything like a free expression of political opinion throughout the said district.

Abundant and conclusive evidence of the facts and views above stated will be, in due time, presented to the Congress of the United States; but the board of State canvassers having felt compelled to issue a certificate of election to William D. Simpson, they desire that no undue force shall be attached to that certificate, but their views of the whole case shall be fully stated and explained. In their official capacity as canvassers, in their private capacities as citizens and voters, as friends of order and public morality and decency, they solemnly avow their belief that the election of William D. Simpson was a monstrous outrage, a ghastly triumph, whose price was treachery, violence, assassination, and murder.

The board of State canvassers, in view of the present condition of the State, of the personal danger attendant upon any investigation or the production of evidence in this case, respectfully urge and recommend that some special measure be adopted by



the House of Representatives to conduct a thorough investigation of this case, and that the aid of the military forces of the United States be allowed to assist in this investigation.

F. L. CARDOZO,  
*Secretary of State, Chairman Board of State Canvassers.*  
NILES G. PARKER,  
*Member Board of State Canvassers.*  
D. H. CHAMBERLAIN,  
*Attorney General S. C., Member Board of State Canvassers.*

I, J. L. Neagle, comptroller general of the State of South Carolina and ex officio member of the board of State canvassers, do fully indorse the facts set forth in the above statements, and desire to say further that I did sign my name to the certificate of election in the case of William D. Simpson under protest, believing and knowing that every vote cast for said William D. Simpson was illegal; that I was induced to sign the said certificate by counsel of others, although fully convinced that the board of State canvassers were both judges of the legality of the votes cast as well as the mere number thereof, and that the said certificate was based on the fact that the said Simpson received the highest number of votes cast, without referring to the question of legality.

That W. D. Simpson was the candidate of a revolutionary party, who went into the canvass with rifle in hand, to win the election by the murder and assassination of peaceable and unoffending citizens; that in the fourth congressional district many republican voters were brutally assaulted, and some were actually murdered, by those same rebel ruffians who were opposing the election of Hon. A. S. Wallace, and pressing with their bloody hands the election of the said William D. Simpson.

I therefore desire that the aforesaid certificate be considered as though my name was not attached, and this same certificate to have all the force and effect of a certificate of the election of the Hon. Alex. S. Wallace in full form and effect.

J. L. NEAGLE,  
*Comptroller General of South Carolina.*

This statement, it will be observed, is joined in by every member of the board, and is not a mere unauthorized statement claiming attention and respect simply because made by persons holding high official station, but is itself in fact an official declaration and protest, authorized and provided for by the same law which constitutes the persons signing it a board of canvassers, and is of equal official character with their action in executing and delivering the official certificate in the case. (See section 41, page 141, Statutes at Large, S. C.)

The resulting conclusions from this state of facts are that while it is true that William D. Simpson is the holder of a certificate of election executed in due form by three of the board, that being the number necessary to give it formal as well as actual validity, it is accompanied and supplemented by the solemn declaration of all whose names are appended to it that it is but the shadow of legal form, wrung from them by a seeming necessity of legal routine, hateful to them as an act, false in so far as by its recitals it might seem to represent any right deserved to be enjoyed under it or vested by it; a shadow whose real substance was a "ghastly triumph, whose price was treachery, violence, assassination, and murder," and thus, while all join in repudiating the natural result of the act done, one of the three expressly declares that, as to him, his name, his act, is wholly withdrawn from the Simpson certificate. If such a withdrawal is lawful, was done, was by the act of protest accomplished, it is submitted that Simpson's certificate is wholly void, is as though it had never been, (the concurrence of three of the board being requisite to give validity,) and leaves the certificate of Wallace, which stands unquestioned, as alone outstanding, and entitles him *prima facie* to a seat. Was that withdrawal accomplished? So far as any intended intelligent volition or assent on the part of Comptroller General Neagle (of which the mere writing of his name was but a witness) is concerned, it unquestionably was; he so declares and puts himself on record.

What valid reason can be adduced against his right or power so to



do? It is surely competent, either in the discharge of public or private duties, to correct mistakes; to reverse a decision when found to be erroneous. The only contrary view that can be urged is in a case where vested rights of innocent persons may in the mean time have intervened; but this is in no sense such a case.

The possession of a certificate of election does not give, create, or add to the right of representing a constituency. It is merely *evidence* of a fact; it does not make the fact. If, in fact, false in its recitals, as one and all of its signers declare the Simpson certificate to be, it cannot create by such a false recital a state of case which exists only in recitals. The anticipated objections, that the board of canvassers, exercising ministerial functions only, could have no right to do any act save to count the returns laid before them and certify that count without question, is sufficiently answered by the case of *Butler vs. Lehman*, (Contested Cases in Congress, p. 353,) and in the case of *Morton vs. Daily*, p. 403, in both of which cases the certifying officer did go behind the returns furnished him and declared a different result from that appearing on the face of the returns, and in both cases the House sustained the action of the officer. The last-cited case is also clearly decisive of the question of the right of certifying officers to reverse their action even after the fact accomplished. In that case the governor of Nebraska had issued his certificate to Morton, and, after the lapse of considerable time, on the discovery of apparent fraud, revoked it and gave a second to Daily, and the House sustained his action by seating Daily.

Nor is such action to be looked on as exceptional, or dependent on the particular circumstances of cited cases. On the contrary, the principle on which this action is based is in itself most wise, necessary, and salutary, and the reason is well expressed in the views of the committee in the case of *Vallandigham vs. Campbell*, (Contested Election Cases, page 230,) in the following language:

Neither the committee nor the House is bound by these rules (the usual rules and principles of evidence) in their letter and strictness, but should proceed upon more liberal principles in the investigation of truth.—*Et. seq., and cases cited to page 231.*

The objection that justice, clearly demanded by every possible consideration of fair dealing, shall not be done, or shall be delayed, because of the omission, or technical error, or hasty and mistaken action of some intermediate official personage, or because the just end to be reached leads across the line of "*nisi prius*" practice, or precedent, cannot stand. That equity might be done, and done in spite of the strict rules of law, courts of chancery were established, that through them righteous conclusions might be reached for the conclusions' sake. By the Constitution, in all matters pertaining to the election, returns, and qualifications of its members, the House is made "a law unto itself," and has no other rule forced upon it for the determination of these questions than the sanction of the oath of its members, and that due regard for the rights of constituencies which the representatives of constituencies, from the nature of their own duties and relations, must have and feel. Not that the technical rules of the law applicable to evidence and weight of evidence, the duties of officers, &c., may not be called in to aid in the proper investigation of a case, but that when called in they shall not be regarded as greater than the rights to be affected by their application.

It is not deemed requisite, in determining the question of *prima facie* right, that the reasons given and the testimony relied on by the board of canvassers, in defense of their action, be weighed or largely considered, since, by the resolution which the committee offers, a full and com-



plete investigation may be had of the whole case; nor does the position of contestant and contestee assumed by the parties in any manner alter or change the status of either claimant in such an investigation. With or without such attempted contest, they stand for every purpose of *prima facie* right just where the official action of the legally appointed canvassing board places them. The constituency are the real parties in interest; the claimants can neither add to nor impair the rights of the people by any admissions or omissions of their own.

As this case is but one of a large number of such cases already before the committee, arising out of a state of facts and society new and unusual, but which there is every reason to fear will continue to arise and confront the House and the country with their most fearful and unparalleled accompaniments of oppressions of the poor and butchery of the unoffending, unless decisive action be at once taken, and such action, too, as shall testify for this House that its floor shall not be *conquered* by such means, but that excesses of such a character, wherever found to have existed, shall be held by this House, for the purposes of its action, to be, as beyond question they are, the confession that, by means of the duress, the slaughter of a majority, have a minority gained the form of success, the committee are constrained to so embrace in their report this distinct element of the case, that the House may, by its action, thus remove the premium on crime, which any seeming acceptance of the results of such a contest, or even its silence, would seem to offer, and thus directly make the self interest of the vicious as largely as possible neutralize their predisposition to violence, and thus incidentally, and, as the committee conceives, in the only manner within reach of the House, give its protection to that class of voters who, by the exercise of a political privilege intrusted to them by the action of Congress itself, are the objects and victims of the most brutal malevolence. From the protest hereinbefore quoted, it appears that such an existing state of facts was one of the main considerations which led the board to revoke its first action in favor of Simpson; and the evidence submitted to the committee clearly justifies the conclusion of fact on which their action is based.

From these views the committee concludes that the only evidence of *prima facie* right is held by A. S. Wallace, and that he is entitled to take his seat in the forty-first Congress as the representative for the fourth congressional district of South Carolina. They, therefore, recommend the adoption of the following:

*Resolved*, That upon the papers referred to the Committee of Elections in the contested case of A. S. Wallace *vs.* W. D. Simpson, from the fourth congressional district of South Carolina, A. S. Wallace is *prima facie* entitled to a seat in the House as the representative of said district, subject to the future action of the House or to the merits of the case.

---

#### MINORITY REPORT.

April 7, 1869.—Mr. Randall, in behalf of himself and Mr. Burr, from the Committee of Elections, presented the following views of the minority:

The undersigned, constituting a minority of the Committee of Elections, being unable to agree with the majority in their conclusions concerning the right to a seat from the fourth district of South Carolina, ask leave to present the following reasons for their dissent:

The election was held on the 3d of November, 1868. The only candi-



dates appearing to have been voted for were A. S. Wallace and W. D. Simpson, each of whom claims the seat, and each presents record evidence in the support of his claim.

While the cases were so before the committee, but as yet not investigated, the House by resolution instructed the committee to institute an investigation in all such, upon a preliminary question, in cases where the question might be put in issue before the committee. That resolution is as follows:

*House resolution adopted March 22, 1869.*

*Resolved*, That in all contested election cases referred to the Committee of Elections in which it shall be alleged by a party to the case, or a member of the House, that either claimant is unable to take the oath prescribed in the act approved July 2, 1862, entitled "An act to prescribe an oath of office, and for other purposes," it shall be the duty of the committee to ascertain whether such disability exists; and if such disability shall be found to exist the committee shall so report to the House, and shall not further consider the claim of the person so disqualified without the further order of the House; and no compensation will be allowed by the House to any claimant who shall have been ineligible to the office of representative to Congress at the time of the election, and whose disability shall not have been removed by act of Congress.

Under that resolution the eligibility of one of the claimants, W. D. Simpson, was put in issue, and the committee unanimously reported to the House that, by the statements of the party himself and his express admissions, he was, under the third section of article 14, ineligible to the seat. That report was accompanied by a joint resolution, sanctioned by a minority of the committee, proposing to remove the disabilities; and thus the claim of W. D. Simpson to the seat is, for the time being, suspended by direction of the House. Yet, although we may not consider his papers in support of his own claim, until he shall have been relieved of disabilities, we may and must consider his papers, in order to determine whether the papers relied upon by his competitor show upon the face superior title to the seat in dispute. But, as a standard by which to judge the legal sufficiency of given papers, the following points are presented, as embodied in the general election laws of South Carolina, passed September 26, 1868.

After providing for certifying the returns from precincts to counties and from counties to the governor, secretary of state, and comptroller general, the law provides as follows:

SEC. 35. The secretary of state, comptroller general, attorney general, and treasurer, shall constitute the State canvassers, three of whom shall be a sufficient number to form a board.

The next section provides for filling any vacancy that may exist in the board where a majority may fail to appear; and the succeeding sections define the duties of the canvassers and of the secretary of state as follows:

XXXVII. The board when thus formed shall, upon the certified copies of the statements made by the boards of county canvassers, proceed to make a statement of the whole number of votes given at such election for the various offices, and each of them voted for, distinguishing the several counties in which they were given. They shall certify such statements to be correct, and subscribe the same with their proper names.

XXXVIII. Upon such statements they shall then proceed to determine and declare what persons have been, by the greatest number of votes, duly elected to such offices, or either of them.

XXXIX. They shall make and subscribe, on the proper statement, a certificate of such determination, and shall deliver the same to the secretary of state.

XL. The board shall have the power to adjourn, from day to day, for a term not exceeding five days.

XLI. The secretary of state shall record in his office, in a book to be kept by him for that purpose, each certified statement and determination which shall be delivered to him by the board of State canvassers, and every dissent or protest that shall have been delivered to him by a canvasser.



XLII. He shall, without delay, transmit a copy, under the seal of his office, of such certified determination to each person thereby declared to be elected, and a like copy to the governor.

XLIII. He shall cause a copy of such certified statements and determinations to be printed in one or more of the public newspapers in each county, if any shall be published therein.

XLIV. He shall prepare a general certificate, under the seal of the State, and attested by him as secretary thereof, addressed to the House of Representatives of the United States, in that Congress for which any person shall have been chosen, of the due election of the persons so chosen at such election as representatives of this State in Congress, and shall transmit the same to the said House of Representatives at their first meeting.

With these provisions of law before us, let us recur to the papers presented by the parties claiming the *prima facie* right. And first in order of execution, the "certificate" of the determination reached by the board as to "what persons have been, by the greatest number of votes, duly elected to such offices." That certificate, as published by the secretary of state, in obedience to section 43—it being the only certificate published or even issued under the law—is as follows so far as relates to this particular district:

THE STATE OF SOUTH CAROLINA.

*By the board of State canvassers.*

Whereas (here follows a recitation of statutes aforesaid, as also of the holding of an election for various officers and the returns received,) and upon examination of the returns received, it appears that (here follow names of parties elected to offices, including representatives from the first and second districts,) Hon. W. D. Simpson, representative of the fourth congressional district, (here follow names of parties elected in other districts,) have been duly elected, by a majority of votes, representatives to the forty-first Congress of the United States.

The concluding portion of this certificate is as follows:

We do, therefore, by virtue of the powers in us vested, certify and declare that the above-named parties have been duly elected to fill the various offices referred to.

Given under our hands and the seal of the State, in the city of Columbia, this 1st day of December, in the year of our Lord 1868, and in the ninety-third year of the independence of the United States.

F. L. CARDOZO, *Secretary of State*,  
NILES G. PARKER, *Treasurer South Carolina*,  
J. L. NEAGLE, *Comptroller General*,  
DAN'L H. CHAMBERLAIN, *Attorney General*,  
*Board of State Canvassers.*

Next is the following:

*Votes of the State of South Carolina for representatives to the forty-first Congress.*

Fourth congressional district.	W. D. Simpson.	A. S. Wallace.	James H. Goss.
Oconee .....	1,064	291	
Pickens .....	1,105	369	
Greenville .....	1,578	1,531	
Laurens .....	1,895	1,181	
Spartanburg .....	2,074	376	
Union .....	1,756	866	89
York .....	2,039	1,537	
Chester .....	1,405	1,662	
Fairfield .....	1,182	1,994	
Total.....	14,098	9,807	89

We certify the above statement to be correct.

F. L. CARDOZO, *Secretary of State*,  
N. G. PARKER, *Treasurer of South Carolina*,  
J. L. NEAGLE, *Comptroller General*,  
*Board of State Canvassers.*



This last statement was published also in the Phenix of December 5, of the same date as the preceding documents; indeed they were but separate parts of the same publication bearing date December 1, 1868. On December 2 the board of State canvassers executed their certificate as required by section 38, and the secretary of state on the same day executed to each of the parties named in the several districts the certified copy of such statement required by section 42, which certified copy for the third district is, in its commencement, as follows: "By the board of State canvassers. [Seal.] To W. D. Simpson."

After then reciting the laws and the election it declares, or certifies, W. D. Simpson to "have been duly elected by a majority of votes," which document is officially signed by all the board of State canvassers except the attorney general.

Based upon this declaration of the State canvassers is a commission in the following form:

THE STATE OF SOUTH CAROLINA.

[SEAL.]

*By his excellency Robert K. Scott, governor and commander-in-chief in and over the State aforesaid:*

To W. D. SIMPSON:

Whereas, in pursuance of an act entitled "An act providing for the next general election, and the manner of conducting the same," passed on the 26th day of September, in the year of our Lord 1868, an election has been held for representative in the forty-first Congress of the United States for the third congressional district, and upon the examination of the returns which have been received it appears that you, the said W. D. Simpson, have been duly elected by a majority of votes; I do therefore, by virtue of the powers in me vested, commission you, the said W. D. Simpson, to represent the people of this State as a member of the House of Representatives of the forty-first Congress of the United States. This commission to continue in force from the 4th of March, 1869, to 4th March, 1871.

Given under my hand and the seal of the State, in Columbia, this 2d day of December, in the year of our Lord 1868, and in the ninety-third year of the independence of the United States of America.

ROBERT K. SCOTT.

By the governor:

F. L. CARDOZO, *Secretary of State.*

These are the papers primarily relied on by Mr. Simpson. Now for the exhibits in favor of Mr. Wallace: The only papers in support of his *prima facie* claim are, first, a certificate by the board of State canvassers, purporting to have been executed on the same day as that held by Mr. Simpson; and, second, a separate "statement of the board of State canvassers of South Carolina in the case of the election of William D. Simpson." Let us consider the certificate first. It differs from that held by Mr. Simpson only in three particulars, and need not therefore be set out here, except so far as the difference is to be considered. Simpson's certificate declares him to "have been duly elected by a majority of votes." Wallace's declares him to "have received a majority of legal votes." The next point of difference is that Wallace's paper bears the signature of Daniel H. Chamberlain, attorney general, in addition to the names of State canvassers signing Simpson's; and last, the paper presented by Wallace bears to the left of the official signature of the canvassers the words, "Robert K. Scott, governor of South Carolina."

Before considering the "statement," let us refer to each of these points of difference in the certificates. The requirement of the law of South Carolina (sec. 38) upon the canvassers is, "shall determine and declare what persons have been, by the greatest number of votes, duly elected." Simpson's paper says, "have been duly elected by a majority of votes."



Wallace's says, "have received a majority of legal votes." In view of the requirements of this section, Simpson's paper is a strict compliance with the statute; Wallace's a departure from the text, and lack of compliance with its terms. As to the next point of difference in the fact that the attorney general signs Wallace's paper and not Simpson's, either paper is in that regard a compliance with the law, (sec. 35,) for by it any three of the canvassers constitute a board. And last, as to the name of Governor Scott appearing on the left of Wallace's paper, as no section of the law requires him to execute or attest such a paper, it is of none effect on the one, nor is its lack in any degree significant in the other. These are all the differences on the faces of the papers so far. Wallace's presents no commission by the governor, which Simpson's does. Wallace shows no published certificate of the result in his favor, as required by section 43, while Simpson shows strict compliance with that section.

Let us now determine as to the priority of certificates and the reason prompting the canvassers to execute two: Each certificate is on its face dated December 2, 1868, but there is conclusive evidence on the face of the papers before us, showing that Wallace's certificate, purporting to have been executed December 2, was, in point of fact, executed at a period many days subsequent to that time. The newspaper before the committee, containing the publication made by the board, is dated December 5, and in it they state that Simpson was elected, which, though the statement is itself dated December 1, they would hardly have permitted if they had, before the 5th, reviewed their first act and determined a different result. But still stronger evidence to show the fact that Wallace's certificate was not made on the day it bears date, is the testimony of his notice of contest served upon Simpson. It is dated December 30, in 1868, and was served on Simpson, January 2, 1869, just one month later than his certificate purports to have been executed. Does any one suppose he would have commenced a contest and served papers on January 2, if he held then a certificate of his election honestly made and delivered one month before that time? But still stronger evidence, if possible, is found by a comparison of several papers together as they are furnished by Wallace himself. Great stress is laid on the statement of the board of State canvassers of South Carolina by the majority of the committee. What is the subject of that statement? In its caption they say it is made "in the case of the election of W. D. Simpson." They say nothing of the assumed election of Wallace in the caption. The first sentence in that statement is an admission that at the date of its execution Simpson was considered as elected, and Wallace not in possession of any evidence of title to a seat, except such as every contestant may make for himself in a notice. That sentence is as follows:

*To the House of Representatives of the United States:*

The board of State canvassers, in the discharge of the duties imposed upon them by law, have felt compelled to declare upon the return of the commissioners of election, that William D. Simpson has been *prima facie* elected to the forty-first Congress of the United States as the representative of the fourth congressional district of the State of South Carolina.

If that admission be not sufficient proof that they considered Simpson as the only party entitled *prima facie* to the seat, what could be? They admit that they had accredited him as the party elected, and at the time of signing that "statement" had made no other certificate. Now, what is the date of that paper? Nowhere on its face does a date appear! Strange omission! A document paraded as a state paper and relied



upon to settle rights, both public and private, without any date. when the question of date is so material as in this case? By technical rules this defect would be regarded as an admission of the party producing the paper, and would authorize the conclusion that its date would, if given, damage the interest it was intended to subserve. But no such implied admission is needed to fix the date as being subsequent to December 2, for in this "statement" the parties signing it professedly as a "board" admit the election of Simpson, and say nothing about certifying in favor of Wallace.

So the published certificate in the paper, the notice of contest, and the statement by the canvassers, all unite in declaring that Wallace's certificate of election was made long subsequent to the day appearing on its face as its true date, and thus the "presumption of regularity" relied on by the majority is destroyed, and the only evidence of title shown by Wallace is impeached before the House.

But can a board of canvassers undo their official act, and perform another at a later date inconsistent with the first? Inasmuch as this same question is involved in modified forms in various other cases before the committee, it will only be considered here so far as is necessary to the correct decision of this case. Let it be remembered that by the law of South Carolina the canvassers are not only required to "make a statement of the whole number of votes given at such election for the various officers," and "certify such statements to be correct, and subscribe the same with their proper names," but shall, "*upon such statements*," proceed to "determine and declare what persons have been by the greatest number of votes duly elected," and "shall make and subscribe on the proper statement a certificate of such determination, and shall deliver the same to the secretary of state." Here are several successive official acts required, each in turn deriving its authenticity from the due performance of the act preceding in the series. First of all is the making of a "statement" of the number of votes, and parties receiving them for various officers, which must be certified and subscribed by their proper names. This foundation was laid in the paper dated December 1, 1868. All other later acts are based on that. Upon that is based the determination and declaration "what persons have been by the greatest number of votes duly elected." That was done in Simpson's paper of December 2, corresponding with the preceding statement of December 1, while the paper of Wallace is a departure from the preceding official acts, and therefore could have no legal value, even if of honest date.

But, in addition, even if a public officer or a board of officers may annul an official act, and, by subsequent determination, move in a different direction, there must of course be a period of time, or a point in the series of acts dependent upon each other, beyond which no such discretionary power could be exercised. As to time, let it be remembered they commenced their work as a board as early as December 1, for that is the date of their first official paper. How long, then, may they continue to act, or, in other words, what is their official term? Section 40 says:

The board shall have the power to adjourn from day to day, for a term not exceeding five days.

Then, measured by time, all their official acts must be performed within the term of five days. But as to power, regardless of time, we deem the true rule to be that when an official act is in itself completed, and other subsequent official acts of the same or other officer has been based upon such completed act, it may not be retracted.



The majority are understood to hold that the statement, without date, by Cardozo, Parker, and Chamberlain, amounts to an official recantation of their official act of December 1, upon which act have since been based—

First. A public statement.

Second. A certificate to the party.

Third. A commission by the governor.

We submit that both by lapse of time and force of subsequent official action, these men were barred from recantation even if on any showing they might exercise it. This view, if correct, disposes of the argument that Neagle might retract, for if three together may not, of course one cannot.

But it is assumed that these "canvassers" were intimidated and under duress when they first acted. Where is the proof? The opening statement, heretofore quoted, that "they have felt compelled to declare!" Compelled by what? Intimidation? Violence? Threats? This is mere pettifoggery. Could not the same force that "compelled" the first act prevent the publication of this "statement?" That sentence merely says that a strict discharge of official duties under the law compels certain action on their parts, which is a declaration that Simpson, and not Wallace, has *prima facie* right to the seat; and they then say what they think will be found to be the relative rights of the parties on final hearing of the case on its merits. So far as this paper is a "protest," or that of Neagle "dissent," the law of South Carolina provides for its reception by the secretary of state, in whose office it shall be recorded in a book kept for the purpose, but in no section is found authority for an act of revocation, or a paper annulling a preceding official deed.

But this statement of the canvassers not only does not assert *prima facie* right in Wallace, but expressly states that he received a minority of votes, for in it they base Wallace's ultimate right on Simpson's ineligibility. They do not reverse the final decision as to the *prima facie* case, but admit and affirm it, declaring, however, their view of final rights or merits as follows:

The board of State canvassers, while not deeming themselves competent to give final judgment upon the question herein involved, do submit that if such disqualification in fact exists, then the election of the said Simpson is wholly illegal and void; and that in consequence thereof, A. S. Wallace, who received the next highest number of votes, is lawfully entitled to the seat as representative of the third congressional district aforesaid.

A. S. Wallace, they say, "received the next highest number of votes." Next to whom? W. D. Simpson? and "if Simpson is disqualified, then his election is illegal and void;" and, in their judgment, as a result "in consequence thereof, A. S. Wallace, who received the next highest number of votes," ought to be admitted. Suppose Simpson were not disqualified? Then his election would not be illegal and void, and Wallace would have no claim, *prima facie* or otherwise, to a seat here. Now, if the House is ready to adopt this theory, that the disqualification of Simpson elects Wallace by a majority vote, so let it be. In so doing it will reverse its own decision in the preceding Congresses, admit its error in the case of Brown and ———, from Kentucky, in the last Congress, place majorities in control of minorities, and in advance sanction party intrigue and official misconduct in suppressing the popular will.

For reasons imperfectly given above we dissent from the majority, and offer as a substitute for their resolution the following:

*Resolved*, That W. D. Simpson is not entitled, under resolution of March, 1869, to a seat from the third district of South Carolina, by rea-



son of ineligibility; and that A. S. Wallace is not entitled to such seat, because he was not "by the greatest number of votes duly elected" by the people of that district.

SAMUEL J. RANDALL.  
ALBERT G. BURR.

---

### MYERS vs. MOFFET.

This case turned upon allegations of fraud and illegalities.

Where the poll was so tainted with frauds and illegalities that the result could not be clearly ascertained, the poll was thrown out.

Where the State law required the inspectors to ascertain certain facts of voters, and they neglected their duty, thus allowing a large number of unqualified persons to vote, it was held that the poll shall be excluded.

Mr. Myers, the contestant, was given the seat, April 9, 1869; yeas 113; nays 38.

April 6, 1869.—Mr. Stevenson, from the Committee of Elections, made the following report :

*The Committee of Elections, to which the petition of Leonard Myers, who contests the right of John Moffet to the seat now held by him as a representative in the forty-first Congress from the third district of Pennsylvania, was referred with the accompanying proofs, respectfully reports :*

That after due notice to the sitting member and an answer from him in accordance with law, each party took testimony in support of his claim, which, with the printed statement or brief of each, has been submitted to the committee without further argument.

The proofs, including a number of exhibits, cover 450 pages. The briefs of the parties, however, stating distinctly their several conclusions of law and fact, and referring particularly to the pages on which they rely, have saved the committee much trouble. In several important instances the parties agree in their statement of the facts, as will hereafter appear. In others of equal importance, where they arrive at different conclusions, the law, as quoted, is not controverted. Again, although evidence is presented by the contestant under several specifications, the committee are not urged to render a decision upon them, he claiming that his case does not require such decision.

The points at issue are thus very much narrowed down, and your committee will consider them in order.

The sitting member, by his counsel, in his brief suggests "that further time should be afforded him to produce his witnesses, if, indeed, his case needs any further testimony." One hundred and sixty-nine witnesses were examined for the contestant, and sixty-nine for the sitting member, but as many as ninety-one of contestant's witnesses were called for the purpose of proving their votes for him; in reality, he only examined nine more witnesses on the general merits than his opponent.

There is no ground on which to base an application for extension of time; nor, if allowed, does it appear in what respect it could avail against that which is admittedly proved.

While contestant does not urge the rejection of any of the votes cast upon what are called the supreme court naturalization papers, of which incumbent admits at least one hundred and fifty-nine were proved, he does ask that some legislation may be founded upon the knowledge of



what he claims to be frauds in these, and in similar cases elsewhere. There is not time at present for any such legislation, but without pronouncing against the reception of these votes, or in favor of rejecting the thirty-two which both sides agree were rejected, your committee believe some legislation on these subjects imperative at as early a day as practicable. The opinion of Judge Read, of the supreme court of Pennsylvania, at *nisi prius*, out of which these papers were issued, presents an alarming state of facts. He says more than six thousand eight hundred persons were naturalized in one month—more than two thousand eight hundred in a week, seven hundred and twenty in one day of five hours; no court authorized to naturalize being in session—a single judge sitting—as Judge Read states, there being “no examination at all,” unless by tip-staves, and, as proved, no interpreter where parties could not speak English—professional vouchers making citizens by the dozen—a lack of obedience not only to the letter of the law, but its scope and intent. The elective franchise will become worthless if such proceedings are not soon checked.

Passing thus from any further reference to questions not to be decided upon, the contestant claims he was duly elected, 1st, by the proof of single illegal votes deposited for the sitting member, sufficient to overcome his alleged majority by 159, even after deducting 30 illegal votes, which he does not deny were cast for himself; 2d, by the guilty conduct and gross fraud of the election officers in the sixth and seventh divisions of the Seventeenth ward, sufficient, as he contends, to cast from the count the entire return of these divisions, less the vote proved to be legal, giving to contestant, with the remaining proofs of fraud in the district, 741 majority.

The sitting member on his part claims, 1st, to have proved 53 illegal votes cast for contestant in the whole district; 2d, that the return of the tenth division, Nineteenth ward, which gave contestant 173 majority, should be excluded, because the election was not held by the rightful officers, and many persons in consequence failed to deposit their votes for incumbent in that division. The sitting member is returned as elected by a majority of 127. The errors of 35 in the count were all stated in contestant's specifications, and were discovered upon an examination of the election papers, both parties being present. They are borne out by reference to the exhibits.

The errors claimed by incumbent are not borne out by the proofs. The error of five is alleged, but there is nothing to show that the figures of the board of return judges are not as much entitled to credit as those filed in the court of common pleas, which should have been duplicates. The alleged error of 53 in the addition of the tally-list of the eighth division, Nineteenth ward, has no existence, nor did incumbent's answer specify it. There is a transposition of figures in the hourly return, an evident mistake of the clerk in copying; and the tally-list of the votes cast, the only foundation for any of the additions, shows this to be so.

Then, 1st, it is shown by the proof that contestant is entitled to his seat without rejecting the return of any poll in the district. Your committee finds that he is so entitled.

The return as reduced by errors of 35 in additions would still give Mr. Moffet a majority of 92. It would involve more labor and time than could be well given to the case at this late day of the session to verify each item of proof as to single fraudulent votes. If it were necessary the time and labor would be given, but it is not. In this computation, therefore, the committee proposes to give to the sitting member the benefit of his own statement. Contestant claims to have proved in the



fourth division of the Seventeenth ward 24 illegal votes, and in all the remaining ones of the district, except the two which it is asked shall be rejected, 35. (See his brief, page 19.) The sitting member (see his brief, pages 4 and 5) admits 41 illegal votes in these divisions. In the sixth division of Seventeenth ward contestant claims 34 personations, besides 87 not assessed and not proved in the manner the laws of Pennsylvania require. In the seventh division, same ward, he claims 29 illegal votes, besides 72 not assessed or proved. Now, as it will appear directly, the counsel for incumbent do not deny the fact that these 87 and 72 voters were not assessed, and do not set up any law under which their votes could be taken without proof, so that these votes must be thrown out, including five in the sixth division of the Seventeenth ward which were cast for Mr. Meyers, and must be deducted from him.

Of the remaining illegal votes, 21 in the sixth division are scarcely denied, (see pages 21, 22, and 23 of incumbent's brief;) and of the 29 in the seventh division of Seventeenth ward, five are very faintly denied. On the other hand, 53 illegal votes, it is asserted, were deposited for contestant, his brief admitting 30.

Taking the sitting member's admissions of fact the result would stand :

Majority for Mr. Moffet, after corrections of mistakes in addition.	92
Less votes not assessed and not proved, sixth division, Seventeenth ward, cast for him, as will be presently shown.....	82
Less votes not assessed and not proved, seventh division, Seventeenth ward.....	72
Less illegal votes, (personations,) sixth division, Seventeenth ward.....	21
Less illegal votes, (personations,) seventh division, Seventeenth ward.....	24
Less illegal votes in the remainder of the district.....	41
	<hr/> 240
Majority for Myers.....	148
From which must be deducted, of the unassessed votes, sixth division, Seventeenth ward, cast for him.....	5
Illegal votes, in all, which incumbent claims were cast for Mr. Myers.....	53
	<hr/> 58
Leaving a clear majority for Mr. Myers of.....	90
	<hr/> <hr/>

Notwithstanding this result, your committee does not feel at liberty to avoid the decision of the main question involved in the case.

Two hundred and forty votes might have been illegally cast for either candidate in a large district without causing the loss of more than that number to either, when proved, but 200 or more votes cannot be received by election officers with a guilty knowledge that they were illegal, or in gross violation of the election laws, which they were bound to consult, without entailing a stronger penalty. In such cases not only State courts but legislatures and Congress have not hesitated to declare the whole poll void and of no effect, except as to such votes as either party chooses to save, by proof of their legality.

It appears in Pennsylvania, and particularly in Philadelphia, where these wrongs are of frequent occurrence, the courts have uniformly declared such to be the law.

The contestant's brief quotes the acts of assembly governing elections.



That of the sitting member does not pretend to set up a different standard of action.

Here there is and can be no dispute. Under the act of 1839, where a person is not assessed, in order to entitle himself to vote he must answer certain questions *under oath*, as to tax, age, residence, &c., and in addition prove his residence *by the oath of a qualified voter* of the division, and in all such cases it is "the duty of the inspectors" to require such proof whether the vote be challenged or not.

Even if assessed, in case of a challenge they must require the proof. Where the vote is taken, the inspectors must add to the list of taxables furnished them by the commissioners, note of the fact, and of the name of the voucher or person making such proof for the voter. The judges have said, in a number of contested election cases, that nothing can dispense with these requirements. The committee has stated that the law is not disputed. Now, contestant proves that in the sixth division of Seventeenth ward, ninety-eight such unassessed persons were permitted to vote, and in the seventh division of same ward seventy-two, without being sworn themselves or producing a voucher. That in the sixth the list of taxables, which is the index and test of the conduct of an election, was missing from the box. In the seventh it was found, and corroborated contestant's witnesses, as it failed to show that any proof had been required of any unassessed voter. If incumbent denied this there might be some dispute to settle; but his only reply is, "This is an unreliable objection. \* \* \* Among nine election officers at the window, one or more would know the voter personally, and in such cases voters are continually recognized."

If "in such cases voters are continually recognized," it must be in just such election districts as the sixth of the Seventeenth ward, which, it appears, was discarded by the court of common pleas, only last year, for that very cause. Congress can certainly never lend its sanction to such a shameful breach of law.

The act of 1839 fines any election officer who knowingly takes *one* such vote without proof, \$200; and the act of April 16, 1866, inflicts a penalty of \$1,000 and an imprisonment of two years for knowingly taking *ten* such votes or upward without proof.

With these laws before us, your committee cannot fail to pronounce these polls violated by such a crime against the rights of the citizens.

Incumbent's counsel reply that in the sixth division of the Seventeenth ward, five of these votes were cast for Mr. Myers, and in the seventh that it is not fully proved for whom they were cast. Were this true it would not alter the matter. On the contrary, the very uncertainty of the result caused by the fraud would tend to destroy all the returns. But it is not true. In the sixth division, Seventeenth ward, 55 votes were returned for Mr. Myers. He was able to prove 51 of them. Except the remaining four, and the five of those unassessed who voted for him, the 87 unassessed, and all others proved to be illegal, must have been cast for Mr. Moffet.

In the seventh division the numbers at which the votes were cast will show that the vote for Mr. Myers during the last five or six hours of the day was proved, these being the hours of the greatest fraud; and besides, not only were the headings of the tickets thus fraudulently voted shown to be democratic—a fact not disputed—but proof was made that every republican on the voters' list but one was assessed. Over two months elapsed after the testimony that the unassessed votes of these two divisions were taken without proof, and it is remarkable that none of these voters, except the five for Mr. Myers, were called to the stand to prove



even that such persons ever resided there. The democratic election officers did not attempt to do so.

Residence, without proof on the election day, would have given them no title to vote, but at least it might have taken some of the taint of fraud from the officers of the election. It could not, however, have helped them, for a number of men in each of these divisions were personated from the assessors' lists. In one instance (page 95) five from one house—one who was known by the inspector to be in prison; one who had lived with, and near him, eleven years; two or three were known by these inspectors to be dead; several they were aware had moved. A fraudulent intent—a guilty knowledge—which, not counting the unassessed votes, would of itself vitiate the election.

It was in the power of contestant to prove some of these frauds; but how many more were perpetrated it is difficult to say.

Challenges in these divisions, except of republicans, were entirely disregarded, and a number of "repeaters" were permitted to cast their ballots.

The sixth division presents the most glaring violations of law. The act of 1839 requires delay of an hour before opening the polls, where there is a vacancy in the board of officers. Here there were several vacancies, and the democratic inspectors sent the only republican officer away in search of others, telling him to "stay out the first hour." This he did, but the poll was opened, and that hour resulted in 69 for Moffet, 8 for Myers. The votes cast in that hour are all illegal on both sides. Votes taken after the time of closing the polls are all illegal, (4 Pennsylvania Law Journal, p. 341,) and any taken before the proper hour are equally valueless.

It will not be said, after all this—it has not in reality been contended, that these acts were justified by any law; but that there may be no doubt of the criminal intent, the committee have a right to judge of these officers by their conduct at the election a few weeks later.

This democratic inspector, although unable to contradict any of these statements, alleges the October election in his division to have been a fair one. If under no other principle it is proper, as contestant claims, to test at least the value of his opinion by what occurred at the November election.

In this same division in November, the democratic inspectors and clerks, after receiving more votes than there were names on the assessors' list, taking as many as 25 votes at a time in several instances, and 119 votes in one hour! added 54 names to the voter list *in alphabetical order*, and then counted up 88 more.

There were only fifteen repeaters there in October. Three weeks later 45 helped to do the work; and if corroborative proof of the fraud in October is yet needed, the fact that one hundred and three of that division who voted in October did not present themselves in November, and in the seventh division eighty-two were missing, including thirty-nine of those not assessed, would furnish it.

Contestant states these frauds in his brief, but a reference to John R. Scott's testimony, on page 176, and to that of Charles Mousley, on page 208, will not only confirm them, but show that the sitting member had full notice of these allegations.

If these officers were innocent, why has he not claimed or attempted to show it, after so much has been proved against them.

Perhaps few stronger cases were ever presented of polls that were so unworthy of credit as these. How can your committee, after this summary, decide them to be legal, except as to the votes proved to have been



so. If their exclusion works any disfranchisement of any voter, he will be glad of the opportunity to see to it hereafter that such men shall not deprive him of his rights, and will concur in a vindication of the law, which it is hoped will aid to assert the purity of the ballot-box.

The vote for Mr. Moffet in the sixth division, Seventeenth ward, less an error of 5 votes in the addition is.....	462
Five of these voters are shown to be legal.....	5
	<hr/> 457
The vote for Mr. Myers is.....	55
All of them proved, except.....	4
	<hr/>
Deduct unassessed .....	5
Deduct not proved .....	4
	<hr/> 9
	<hr/>
Vote for incumbent rejected.....	448
The vote for Mr. Moffet in seventh division, Seventeenth ward, is.....	352
Four of these were proved to be legal .....	4
	<hr/> 348
The vote for Mr. Myers is.....	85
Of which he proved .....	40
	<hr/> 45
	<hr/>
Votes for Mr. Moffet rejected .....	303
Illegal votes admitted by incumbent in remainder of district ....	41
	<hr/> 792
Allowing, as above stated, all the votes claimed to have been cast illegally for the contestant .....	53
	<hr/>
Total illegal votes to be rejected from the return for Mr. Moffet..	739
Less amended return for John Moffet.....	92
	<hr/> 647
	<hr/>

Before finally declaring this result there remains to be considered the demand of incumbent that the poll of the tenth division in the Nineteenth ward shall be excluded.

In this division there was a conflict of authority, and it seems to be conceded that each set of officers supposed itself the legal election board. Violence in ejecting one set, it is true, was charged, but the preponderance of the evidence is to the effect that only Hooper, who claimed to be the judge, was removed by the police at the request of Addis, the duly elected judge. Four of incumbent's witnesses swear to that fact, and it appears from the testimony of Brower that there had been disturbances about that election poll for ten years. This does not seem in any former year to have been deemed a cause for exclusion of the poll. In fact, contestant's witnesses declare the election to have been an unusually quiet one during the day.

If Hooper was the rightful judge, then his removal would be sufficient reason to exclude the vote of the division. It is all important, therefore, first to determine who were the legal officers.



The misunderstanding arose from the subdivision of the tenth precinct of the Nineteenth ward, part being still called the tenth, and the rest the fourteenth. By this action of councils, Mr. Addis, who had been elected judge of the old tenth division, became a resident of the new one—the fourteenth. In such cases the law is explicit.

By the act of April 28, 1857, sec. 1, Pamphlet Laws, page 329, it is provided—

That whenever a *new election division* or divisions has been or shall be created in any of the wards of the city of Philadelphia, by the councils of said city, the officers to conduct the election next thereafter occurring shall be chosen as follows: If such division shall be formed *entirely out of an old division*, the officers elected to conduct the election in *said division shall appoint the officers for the new division*, the judge appointing the judge and each of the inspectors appointing an inspector.

Addis, not aware of this law, had given authority to Hooper to act in the old, but on ascertaining that his appointment would have to be for the new division, he and two of the other legally chosen officers of the old division presented themselves at that poll demanding to act. This was refused by Hooper, whereupon Addis read the law to him, stating that he only desired to do what was right, and after a second refusal Simpson also read the law to him. Unless Hooper should leave, the whole poll might really have been invalid. The police were accordingly summoned, and the violence complained of was no more than necessary to remove Hooper. The others left, Brower among them, and after waiting an hour the citizens chose officers to supply the vacancies.

The committee is compelled to decide that Addis was the legal judge, and that the officers who acted with him were all legally chosen.

It is urged with some force in the brief for the sitting member that he lost many votes in that division by these occurrences.

It is certain that a number of democratic voters, apparently in the hope that the whole vote would be declared illegal, some of whom were dissuaded from voting, (see page 193,) absented themselves from this poll. Two witnesses guess at the number thus lost, and one other (page 195) states that the democrats in November polled 82 more votes there. Ignorance of the law on the part of citizens will not operate to throw out a poll. There was no fraud here. No citizens were deprived of the opportunity of voting. On the contrary, democrats who wished to vote were furnished tickets or told where they could get them, (see page 189.)

Suppose your committee should undertake to rectify the error of those who failed to vote; by what standard of law shall it be done? Fraud of the officers it has been shown may disfranchise even those who voted honestly; but to reject this poll for the purpose of correcting the error of some of the citizens, would disfranchise one hundred and seventy-three republicans, because, at the farthest, eighty-two democrats had been dissuaded from voting, who it appears deposited their ballots in November, and might or might not have done so in October under other circumstances.

Regretting the misunderstanding in this election division, your committee is nevertheless unable under the law to interfere with its return. If it were deducted, Mr. Myers would still have a legal majority of 474 votes. This deduction is not allowed, and his majority is declared to be 647.

In justice to the volume of testimony adduced on both sides, and the importance of the question involved, this report has reviewed those questions, both of law and fact, very fully; and your committee, as the result of their investigation, offers the following resolutions:

*Resolved*, That John Moffet is not entitled to a seat in this House as a



representative from the third congressional district of Pennsylvania to the forty-first Congress.

*Resolved*, That Leonard Myers is entitled to a seat in this House as a representative from the third congressional district of Pennsylvania to the forty-first Congress.

---

#### MINORITY REPORT.

April 6, 1869.—Mr. Randall, from the Committee of Elections, presented the following as the views of the minority :

The minority of the Committee of Elections, to whom were referred the papers in the contested election case of Myers *vs.* Moffet, in the third congressional district of Pennsylvania, submit the following as their reasons for not concurring in the views and conclusions of the majority of the committee in the said case. The evidence, when examined, will be found to contain much of *hearsay* testimony—all such, to our minds, is outside of the record for any purpose of examination by us, and reduces the points at issue to a few—which we propose to take up in order.

First. The attempt of the contestant to attack and have stricken from the count all such votes as were cast by persons naturalized by the supreme court of Pennsylvania at *nisi prius* sitting, cannot for a moment be sustained. As we understand the reading of the majority report, it is not held by them as tenable ; and it would not be necessary further to notice this point, except that the contestant seems to place much stress upon it, and relies upon an *ex parte* and indecorous address from the bench by Justice Read, of the supreme court of Pennsylvania, spoken in October, 1868.

The brief of the contestant recites as follows :

The first is the naturalization in Philadelphia in September and October, 1868, of 6,856 aliens by a single judge of the supreme court, sitting as *nisi prius*, not authorized to naturalize. \* \* \* The committee are referred to the able opinion of Judge Read, of the supreme court, sitting at *nisi prius*, exposing the great wrong that was done by this illegal naturalization and the failure to comply with any substantial requirement of the laws of the United States affecting naturalization, declaring “ the whole issue illegal, contrary to the act of assembly, and that it *should be rejected at the polls.*” This opinion will be found on pages 305, 306, and 307 of the testimony, Exhibit No. 2, and also the order made by him November 2, 1868, “ that no more aliens should be naturalized in said court.”

A perusal of this opinion will best afford some conception of the wrong done the citizens of Philadelphia in the grant of these naturalization papers.

Let us review this “ speech ” from the bench, which would have been appropriate in the forum from a partisan, or any other person than a judge, having jurisdiction in the matters alluded to.

The third section of the act of Congress of April 14, 1802, defines the courts that are entitled to naturalize aliens in these words : “ Every court of record in any individual State having common law jurisdiction and a seal and clerk or prothonotary.”

Is the court of *nisi prius* in Philadelphia such a court ?

The supreme court of Pennsylvania was established by a provincial law of 1722, after the model of the Court of King’s Bench in England. As *nisi prius* was an incident of the King’s Bench, it became an incident also of the supreme court of Pennsylvania.

The name of this court was derived from two words in the writ of summons which issued in Latin out of Westminster Hall, in the King’s name, to any county in the realm, commanding the defendant to appear on a



day certain before our justices at Westminster, *nisi prius*, (unless before;) we come by our justices into the said county of York or Surrey, or whatever county it might be.

The justices, or one of them, was sure to come to the appropriate county to receive return of all writs and to hold court; and the court he held was called a court of *nisi prius*, taking the name from these words in the writ.

We adopted the same name without the same reason. Our *nisi prius* was always held by one of the justices of the supreme court, and tried civil issues, but judgment was rendered by the court in banc. It was little more, originally, than a court for ascertainment of facts, the conclusion of law arising from these facts being declared by the supreme court.

By act of assembly of 26th July, 1842, the judge at *nisi prius* was authorized to "enter judgment in all cases brought or to be brought in said supreme court on original process, and to make all orders and decrees in such cases as fully as any court of record could or might make."

This carried all the original jurisdiction of the supreme court into the *nisi prius*. The supreme court was essentially a court of errors and appeals, but from a very early day the legislature gave it original jurisdiction in the city and county of Philadelphia in civil controversies where \$500 of value was involved. On the reorganization of the courts by the act of June 16, 1836, this original jurisdiction was continued, but it was limited to the city and county of Philadelphia, and not extended to the rest of the State.

Then, by the act of 1842 before cited, this original jurisdiction was to be exercised, not by the court in banc, but by the court of *nisi prius*; and the supreme court have decided in many cases that bills in equity, common law suits, and all original proceedings, must be had before that court and can come into the supreme court only by appeal from the *nisi prius*. The seal of the supreme court and the prothonotary have been the seal and clerk of the *nisi prius* from the beginning, and its records are kept in the same dockets as the proceeding of the court in banc. Thus it has been constituted an independent court, with full common law powers, with a seal and a clerk, no less truly its seal and clerk than if they were not also the seal and clerk of the supreme court.

Naturalization of aliens is original process. Nobody will question this proposition. By the uniform practice of the supreme court, and by the express terms of the act of 1842, this process belongs to the *nisi prius*. It cannot regularly be exercised by the court in banc in the city and county of Philadelphia, and it has scarcely ever been attempted. But the records show naturalization of aliens by the *nisi prius* as early as 1799, and from that day down to this time, that court has granted naturalization. From 1840 to 1869 the whole number naturalized in that court has been 16,414.

What better evidence of the law can be had than this traditional testimony? The legislature, the supreme court, the public, have all agreed for seventy years that naturalization in the supreme court belonged to the *nisi prius*, and it has been exercised without question, until Judge Read, for the merest partisan purposes, threw doubt over the subject. He had naturalized many aliens at *nisi prius*, as each one of his brethren had done, but last fall, on the eve of the election, a political dodge was agreed on by which naturalization papers should be discredited. Judge Read and William B. Mann went into the court-room one morning. Mann made his valedictory speech on taking leave of the office of district attorney, and in response to his speech, Judge Read adverted to the



subject of naturalization, and declared that the certificates recently granted by his brethren Thompson and Sharswood, when sitting at *nisi prius*, were void.

The republican press published his impertinent words as a decision of the supreme court vacating several hundred of naturalization papers, and republican election officers were very ready to accept it as law, and thus this discreditable trick enured to the benefit of the republican party.

Now, when it is considered that the naturalization granted by Chief Justice Thompson and Justice Sharswood at *nisi prius* was in accordance with the usage of the court for seventy years; that it accorded with the practice of every judge who has sat at *nisi prius*, including Judge Read himself; that one judge at *nisi prius* has no power to review or reverse the proceedings and judgment of another judge, but this can be done only by appeal to the court in banc; that the cases which Thompson and Sharswood had passed upon were in nowise before Read; that he had no case relating to naturalization before him; that his words were not a judicial opinion, but an impertinent defamation of two of his brethren, and of the clerk of the court. When all these facts are considered, is it possible that there can be any two opinions among honorable men as to the conduct of Judge Read? However acceptable his conduct may be to mere partisan politicians, is any man bold enough to say that Judge Read could by the mere breath of his mouth blast the certificates of naturalization granted by his brethren?

He pretended that men were not duly sworn. How did he know? He was not present to see how Thompson and Sharswood performed their judicial functions. They had power to naturalize; they were duly sitting at *nisi prius*; they are competent and experienced judges—far more competent for their duties than Judge Read; and without any testimony as to their mode of performing their duties, and without any power to review their conduct, what right had Judge Read to slander them from the bench? And what were his slanders worth except for the ephemeral purpose for which they were intended? They were designed to help a political party at the polls, and they accomplished this dishonest purpose, but let them not be reproduced as evidence of the law of Pennsylvania.

If tipstaves administered oaths they did it as the agents of the clerk whose appropriate duty it was. The crier and the tipstaves of the *nisi prius* are accustomed to administer oaths to jurors and witnesses, but they do it in the presence and under the eye of the judge, and as his agents or servants. The clerk when he does it acts as the agent of the court. The judge himself never administers oaths at *nisi prius*, but causes it to be done by some of these subordinate officers. If this were an irregularity, which it was not, Judge Read had no corrective power. His conduct was a gross impertinence.

Why is his unauthorized and impertinent opinion cited in this election case? Is it referred to as evidence of the law? Is it cited to lead the House to the truth or to mislead them? Forney's Press would be as good authority to cite. Judge Butler, in the Chester district treated the opinion with the contempt it deserved, and the majority of the Committee of Elections would have done well to cast it out as Judge Butler did. The certificates of naturalization under the seal of the court were judicial records that could be impeached only by regular process of review before the court in banc. Judge Read had no more power to vacate them than he had to repeal patents or upset judgments.

Not relying solely on our opinion and judgment, we quote the *deci-*



sion of President Judge Butler of the Chester and Delaware district within the State of Pennsylvania, in the case of Commonwealth *vs.* Daniel Leary, not a made-up issue, but one properly before him for decision.

The law upon this question has been ruled by Judge Butler, an eminent republican judge, the president of the court of common pleas of Chester and Delaware Counties, in the following opinion:

CHARGE OF JUDGE BUTLER IN COMMONWEALTH *vs.* DANIEL LEARY.

The tenth section of the act of assembly of April 4, 1868, provides that if any prothonotary, clerk, or the deputy of either, or any other person shall affix the seal of office to any naturalization paper, or give out the same in blank, whereby it may be fraudulently used; or furnish a naturalization certificate to any person who shall not have been examined and sworn in open court, in the presence of some of the judges thereof, according to the act of Congress, shall be guilty of a high misdemeanor; or if any person shall fraudulently use such certificate of naturalization, knowing that it was fraudulently issued, or shall vote or attempt to vote thereon, he shall be guilty of a high misdemeanor, and either or any of the persons guilty of either of the misdemeanors aforesaid shall, on conviction, be fined in a sum not exceeding \$1,000, and imprisoned in the proper penitentiary for a period not exceeding three years.

The defendant is indicted under this act for attempting to vote on "such a certificate." The Commonwealth has shown that he presented himself at the polls and offered his vote, exhibiting as evidence of his right a certificate of naturalization purporting to be issued out of the supreme court of this State, signed by its prothonotary and bearing its seal. And nothing further pertinent to the issue is shown. Clearly this does not make out a case. A certificate of naturalization in due form and properly attested is sufficient evidence, in the first instance, that the individual named in it "was duly examined and sworn in open court in the presence of some of the judges, according to the act of Congress," and that the certificate itself was regularly and lawfully issued. It is not *conclusive*. The contrary may be shown. But those who assert that the individual was *not* "examined and sworn in court," &c., or that the certificate was not issued according to law, but in the language of the act, "was given out in blank," must prove it. Until this be done the *prima facie* case established by the certificate stands. It was the right of any one challenging the defendant's vote thus to attack his certificate, and it was the right of the Commonwealth to do so here. Had we any evidence that the certificate is, within the meaning of the act, a fraud, there would be something to submit to the jury; but we have not. The certificate stands unimpeached. It seemed to be supposed by the counsel that the Commonwealth could rest its case on a paper exhibited, called, "An opinion of the supreme court by Judge Reed." This was a mistake; the paper is wholly unimportant to the prosecution. No opinion has been pronounced by that court touching the truth or genuineness of the certificate here involved, or in any way affecting this case. The eminent judge referred to has made certain statements in respect to the manner of naturalizing individuals in the supreme court, and the issuing of certificates therefrom; and has given expression to his views in relation to it. But there was no case before him calling for the exercise of his judicial functions, and nothing, therefore, was or could be decided. His statements, tending to impeach this and other certificates, are of no higher value in a court of justice than the statements of any other man knowing the facts. His statement of the law, when the duties of his office call upon him to expound it, are entitled not only to great respect, from his ability and learning, but, from his eminent position, are conclusive and binding. Under any other circumstances his statement of the law decides nothing, and his statement of facts cannot, under the rules of evidence, even be heard, except as we hear that of any other person, on the stand as a witness. We must not forget that we are in a court of justice, where no rumor or outside unsworn statement (no matter by whom made) can be allowed the slightest weight.

The evidence of the defendant's admission or confession, that he had not resided in the country the full period of five years, it must be observed, is wholly unimportant in the issue before us. It does not attack the *truth or genuineness* of the certificate, and does not, therefore, tend to prove an offense within the act of assembly. It does tend to show that the court issuing the certificate was imposed upon; but that question is not before us. It doubtless had much to do with the rejection of the vote, and the commencement of the prosecution. This, however, was a mistake; an honest mistake, judging from what is before us. The election officers could not inquire into the fact whether the defendant had resided in the country for five years, nor into any other matter involving his *right to naturalization*. All these facts were passed upon and decided by the tribunal to which the law has referred the subject, the court. Behind this decision the election officers could not go. Like all other judgments of a court, it settles all questions of fact upon which it depends, and cannot be collaterally attacked or impeached. The elec-



tion officers may inquire into the *truth and genuineness* of the certificate, and it is their duty to do so. This is simply the *evidence* of the *judgment* pronounced by the court. And if it be proved untrue or spurious, they should disregard it. But if it stands unimpeached, they cannot, we repeat, go behind it and inquire whether the *judgment of naturalization* itself was rightly pronounced. They cannot rejudge what the court has already adjudged and decided. Any error into which the court has been led must be corrected by itself.

No case being made out by the Commonwealth, the defendant must be discharged.

For the purpose of a clear, full, and comprehensive understanding of the matter, we hereunto directly annex the opinions of Justice Sharswood and Chief Justice Thompson of the said supreme court of Pennsylvania, associates with and members of the same court as Justice Read.

In the matter of the rule on James Ross Snowden, esq., prothonotary of this court, to show cause why an attachment should not issue against him for contempt.

SHARSWOOD, J.:

The process of attachment for contempt is a summary remedy which has been exercised by the courts in England as far back as the annals of the law extend.—(4 Blackst. Com., 286.) The use of it was so much enlarged by judicial decisions that the legislature of this State saw proper to provide by the act of April 3, 1809, (5 Smith, 55,) that “the power of the judges of the several courts of this Commonwealth to issue attachments and inflict summary punishments for contempts of court shall be restricted to the following cases, that is to say, to the official misconduct of the officers of such courts respectively, to the negligence or disobedience of officers, parties, jurors or witnesses against the lawful process of the court; to the misbehavior of any person in the presence of the court, obstructing the administration of justice.” This provision was re-enacted by the revised act of June 16, 1836.—(Pamphlet L., 793.) The mode of proceeding is well explained in *Hollingsworth vs. Duane*.—(Wallace Sea. Rep., 78.) A rule is generally granted in the first instance on affidavits, upon the return of which the defendant answers on oath, the evidence is heard, and if the court should be of opinion that the fact on which the rule was taken is not sufficiently answered or excused, and that in point of law a contempt has been incurred, an attachment is awarded when the defendant is brought in on this writ to answer interrogatories propounded to him on behalf of the Commonwealth, in whose name the writ always issues, and if he gives such answers as purge him from the criminality, he must be discharged.—(4 Blackst. Com., 287.) Case of *Hummel and Bishaff*, 9 Watts, 416. In this case the rule was granted upon affidavits that twelve naturalization certificates, purporting to be signed and sealed in blank by the prothonotary of this court, had been found on the person of a prisoner, who had been arrested and was in custody on another charge. The certificates were produced. I allowed the respondent on the hearing of the motion to prove, which he did by several witnesses well acquainted with his handwriting, that the signatures were forgeries; yet as the impression of the seal appeared to be genuine, I granted the rule. On the return of it the respondent put in an answer on oath, in which he positively and distinctly denied any knowledge of the papers, or that any such had ever been signed, sealed, or issued with his knowledge or by his authority. No attempt ever has been made to prove by a single witness that the handwriting is that of the respondent. The attorney general, Mr. Brewster, with that candor which always characterizes him as a gentleman and a lawyer, has admitted that it is not. He has also declared, with the same frankness, that he does not believe the respondent to have knowingly issued, or permitted to be issued, any blank certificates like those in question. The whole evidence establishes this beyond a doubt. The personal integrity of the respondent is, therefore, fully vindicated. But the ground has been assumed that he has been guilty of gross negligence in allowing the business in the office to be so transacted, that naturalization certificates such as these might be surreptitiously obtained, and such gross neglect, if it exists, would unquestionably constitute official misconduct. All the clerks in the office, some who have been heretofore connected with it but are not now, and many other witnesses, have been examined. The widest range and the fullest opportunity by adjournment have been given to the Commonwealth to pursue the investigation. It was due alike to the court and the community, and the respondent himself, that this should be done. The specifications of alleged negligence have been reduced to five, which I will proceed to examine. First, as to the seal, that the die by which the seal is affixed to writs and records should be carefully guarded must be admitted by every one acquainted with the law on this subject. It is established beyond all question that the seal of a court of record proves itself; nor is it necessary for a party offering it in evidence to prove it or the signature of the attesting clerk. The burden of disproving it is cast upon him who alleges that it is false. This is the law as daily administered in all our courts, as laid down in every standard work



on evidence, and fully supported by all the decided cases. "In proving a record by a copy under seal," says Mr. Greenleaf, "it is to be remembered that the courts recognize *without proof* the seal of State" and the seals of the superior courts of justice, and of all courts "established by public statutes." "The seals of the courts of justice," says Mr. Starkie, "are of public credit and are part of the constitution of the courts, and supposed to be known to all." (1 Greenleaf on Ev., 503; Starkie on Ev., 8; Am. ed., 258; 1 Phillips on Ev., 385; Hill & Cowins' note 714, in which the American cases are collected.) I could multiply citations on this point, but I forbear, as I do not believe any lawyer can be found who questions it. That such a certificate of a judicial proceeding is conclusive and cannot be set aside on the ground of any errors, illegalities, or irregularities, where the court has jurisdiction, unless by the same court in which it took place, or some higher court on error or appeal, and stands conclusive as to all the world until it is actually so set aside, is a point equally incontrovertible. (McPherson vs. Cunliff, 11 S. & R., 429; Weekly vs. The German Lutheran Congregation, 3 Rawle, 180; Marsh vs. Pier, 4 Rawle, 284; Bower vs. Tullman, 5 to 25, 556; Gaple et al. vs. Titus et al., 5 Wright, 195.) A legion of authorities might be invoked as well from this as from every State in the Union to the same effect. It has been held in the Supreme Court of the United States that the judgment of a court admitting an alien to become a citizen is conclusive that all the provisions of the law have been complied with. (Stark vs. The Chesapeake Insurance Company, 7 Cranch, 420; Spratt vs. Spratt, 4 Peters, 393.) "This judgment," says Chief Justice Marshall, "is entered on record as the judgment of the court. It seems to us, if it be in legal form, to close all inquiry, and, like every other judgment, to be complete evidence of its own validity." The same principle has been recognized and applied to certificates of naturalization in every State court in which the question has ever arisen. (McDaniel vs. Richards, 1 McCord, 187; Ritchie vs. Putnam, 13 Wendel, 524; McCarthy vs. Richards, 1 Selden, 263.) I have searched diligently, but without success, through all the books for any decision or even *dictum* which either denies, qualifies, or doubts this doctrine. It is one of the firmest settled foundation-stones of the law. It is evident, then, from these considerations, that the importance of guarding the seal of the court from being tampered with cannot be overestimated. It is objected against the respondent that it is not kept in a safe position. It has been proved, however, that it was kept in the same place for many years before he was appointed prothonotary. He found it there when he first took possession of the office. Every judge who has been on this bench during all that time has, of necessity, frequently seen it. It is within the view of all the clerks when the office is not crowded, and when it is crowded it is near and within view of one of them. When the crowd became so great lately that the attention of this clerk might either accidentally or designedly be diverted to another quarter, the respondent appointed a clerk, whose sole duty it should be to take charge of it and see that it was affixed to no papers unless by some one duly authorized. It is certainly unimportant that this person had been but a few days before employed when this duty was assigned to him. It required no special knowledge or experience to perform it; of his sobriety, intelligence, and integrity no question has been made. That the seal should be kept locked, and be unlocked every time it is needed, is an idea no one can entertain for a moment, unless indeed the clerks should be allowed to keep always on hand a very considerable number of all kinds of writs and certificates of records, ready sealed, which, however, the Commonwealth objects to strenuously as being itself evidence of negligence. We must not leave out of view, in the consideration of this case, that the room provided for the prothonotary of this court is small and narrow, entirely insufficient for the safe and convenient transaction of its business and the security of its important records. That, however, is not the fault of the respondent. I think this specification is not sustained. The second allegation is that the respondent authorized his name during his absence to be signed by the clerks to certain documents to be used at Washington in obtaining pensions and bounties from the treasury of the United States. It seems that the rule in that department is not to receive documents signed *per procurationem*. Whether this was right or wrong in the respondent I do not think I am called on to decide. It does not relate to the records or business of this court. It is done, as I understand, to authenticate the signatures of aldermen to jurats and other documents. If his practice is wrong he is amenable to the federal authorities. It is fully proved that he never authorized it to be done in certifying the records of this court, but expressly forbade it. I dismiss this specification. The third allegation is that he allowed naturalization certificates, signed and sealed, blank, to be used by his clerks. If the fact was clearly established, I would consider it as evidence of negligence. Provided due precaution were observed as to the custody of the papers, I see nothing in the fact that each of these clerks may have had at times a pile of certificates directly before him and immediately under his eye ready signed and sealed while engaged in filling them up. The evidence shows that since the crowd became so great as to make such a practice dangerous it has been discontinued. Certainly, if Mr. McCarthy is to be believed, since the seal has been placed in his charge no certificate in blank has passed under it. I find no negligence, therefore, under this head. The fourth allegation is that



the clerks permitted blanks, neither signed nor sealed, to be taken out of the office to be filled up by strangers. I do not know that this has been shown to have been brought to the knowledge of the respondent. It has been testified, however, to be a common practice in all the offices. It very much expedites business. Without the seal and attestation the blank is nothing, and I cannot see that it would be much security against frauds to refuse this accommodation. The fifth and last allegation is, that the respondent appointed temporarily, as a clerk, a man who, in 1853, was convicted and since served out an imprisonment of two years for the offense of altering forged pension certificates. It clearly appears that the respondent engaged him on the recommendation of his chief clerk, Mr. Ross, without any knowledge of the fact of such conviction, or of anything against the character of the man, as he has sworn in his supplemental answer filed. Mr. Ross confirms this, and adds that though he had known the individual in question for many years and many persons of his acquaintance, he had never heard of the conviction, and that when he recommended him he believed his character to be good. There is not the slightest evidence that this clerk was guilty of any irregularity or impropriety during the short period that he was employed in the office. No negligence has been established in this matter. After hearing the whole case, in connection with the clear and satisfactory testimony of Mr. Anthony Morin, an expert of long and large experience as to the entire practicability of making by the electrotyping process a false seal from a good paper impression of the original, which would make impressions on paper equal to the best of them appearing on these forged blanks, I am strongly inclined to the opinion that they were not sealed in the office. That opinion has been confirmed by comparing these impressions with twelve genuine ones made at the same time, and which are in evidence. Every one of the seals of the forged papers, except one, is better than the uppermost and best of the twelve true ones, and are all about equally good; yet none of them is so sharp and good as a true impression taken separately. The letters on all the false papers are distinct and legible, while after the first four or five of the genuine ones no letters can be distinguished at all. I think it most probable, from their uniform appearance, that the false seals are all single separate impressions from a die not so sharp as the original—just such a one as, according to Mr. Morin, could be electrotyped from a paper impression. It will be observed that in the course of this searching investigation into the conduct of the respondent no charge has been made nor any evidence given of any misconduct in that part of naturalization which was under his immediate supervision in court. None of the clerks or officers engaged to assist him in those duties have been called or examined. Yet, as irregularities in all parts of the process have been alluded to, I may take this opportunity to make a few remarks in explanation of the mode adopted in this, and, heretofore, in the other courts of this city, in admitting aliens to the rights of citizenship. I do not mean, of course, to express any opinion upon the legality of that mode, because the question may, in some form, come before the court in banc, and it would evidently be improper for me, as it does not arise in the case before me, to prejudge a question of such importance. It is not inconsistent, however, with my duty in that respect to say that if this mode, so long pursued, be illegal, and, therefore, void, and the naturalization certificates issued under it can be lawfully rejected, then nine-tenths of all the aliens naturalized by our courts during the last thirty years will be reduced again to the condition of aliens. Any man, whether lawyer or not, who can draw a logical inference, must acknowledge that this consequence is inevitable. When I took my seat upon the bench of the district court in 1845, I found this system had been followed by the learned and pure men who were members of the court which had preceded that to which I had been appointed, and by that distinguished jurist, Judge King, then president of the court of common pleas. That system is this: In the cases of application on declarations of intention the judge examines the papers, and if found to be regular, delivers them to the clerk or one of the officers to administer the required oaths on the petitioner and his voucher in the court-room. In the case of those who apply on the ground of having arrived in the country under the age of eighteen years, as they are, required to produce no papers, there is nothing to examine. The petition, with the accompanying affidavits, is a printed form, the same in all these cases; and the clerk has only to see that it is properly filled up with the name and the country of the petitioner, and the year of his arrival. Upon taking my seat in the court of *nisi prius* on the first Monday of September of this year, I found on inquiry that the established practice here had been to refer the examination of the papers in all cases to the prothonotary, with directions, however, that if any doubt or question arose in his mind in any, to report it for the opinion of the judge. I saw clearly the reason of this difference. The prothonotary of this court is a lawyer of mature age and experience, appointed by the court itself, and possessing its entire confidence. He is always personally present in court attending to his duties. Whereas, in the other courts the prothonotaries and clerks are generally not lawyers, are not appointed by the courts, and act entirely by deputies. I determined, on reflection, to pursue the same practice I had always followed in the district court, not from any—the slightest—want of confidence in Colonel Snowden. But I thought I would feel better satisfied if I gave such



personal supervision to the matter as I had been in the habit of doing. I acted accordingly. There was one other difference, but in which I thought the practice here was a decided improvement. I observed that the oath administered to petitioners as minors, instead of being general "that the contents of their petitions were true," recited particularly the facts set forth in them. I took occasion to express my approbation of it to the prothonotary. As to the policy or expediency of changing this practice of so many years' standing, by substituting one accompanied with more formality and delay, it is unnecessary that I should now express any opinion. If any plan can be adopted by which the naturalization of foreigners can be spread ratably over the whole year, instead of nine-tenths of it being crowded into the few weeks before the election, it would undoubtedly be an improvement. Even then I apprehend it would be found a very serious interruption and impediment to the other business of the courts, if it were required that the judge should personally examine every petitioner and his voucher, during which time all other pleas must of necessity cease. My recollection is that in 1851 it was tried in one of our courts, I do not know how long, but it was abandoned because it was found impracticable consistently with a regard to the rights of other suitors. But however this may be, it is plain that any such change of practice ought to be announced at least nine months before an election, so that all persons entitled may take measures accordingly. To spring it upon the community on the eve of such an event would work the grossest injustice. By the delays it would occasion it would very much increase the crowd in and at the doors of the court-room. There would be clamor and struggling for precedence which could not well be prevented or restrained. If arranged in a line it would require the petitioners and their vouchers to wait in attendance perhaps several days before their turns would come. Laboring men would thus lose valuable time which they could ill afford, and it would be a practical denial of the right to hundreds of men fully and justly entitled to it under the laws of the land. It may be that among so many cases there are instances of fraud, perjury, and false personation. But I doubt if the change proposed would tend to prevent those crimes. Every day that I sat, except during the first two weeks, when the applications were comparatively few, I rejected many petitions. In several instances I specially examined the petitioner and his voucher on oath if anything appeared doubtful or suspicious on the papers. That a very large number have been naturalized is true, but not more, I think, than was to be expected. In every election preceding a presidential election which I remember, except 1864, the number has been large. In the fall of 1856, twelve years ago, more than five thousand persons were naturalized in the district court alone. Since then the yearly influx of foreigners has been very great. But there exist special reasons why the numbers should be much greater on this year than on any former occasion. During the war naturalization almost entirely ceased. This is the first presidential election since its close, so that there is, in fact, nearly the arrivals of eight years, which have been held back. I remarked in examining the declarations how very large a number there were who might have been naturalized prior to 1864. There is another cause for a very considerable percentage of increase. In 1862 Congress passed an act allowing any honorably discharged soldier to be naturalized on one year's residence, and without any previous declaration. I think that during the month I sat at *nisi prius* I examined as many cases of discharges as of declarations of intention. It is no argument, therefore, to parade numbers as evidence of frauds or irregularities. If there is any impression among the members of the bar, and in the community, that the whole process of naturalization has been conducted by the prothonotary without any personal supervision by me, and that in a loose and unusual manner, it will be seen from this statement that it is entirely without foundation in fact. I have thus disposed of this case, so far as the rule on the prothonotary is concerned; I order it to be discharged. But I have not forgotten that the main object with which this investigation was commenced was to discover by whom, and how, forged papers, if they did come from the office, were obtained, in order that the guilty parties might be discovered and punished. The first application to me on the part of the Commonwealth was for an attachment, or bench warrant as it was termed, against John Devine, in whose possession they were found, in order that he might be compelled to disclose how they came into his possession. I thought it very clear that, under the act of assembly before referred to, I had no power to issue an attachment for contempt in such a case. It was at my suggestion that the rule was entered on the prothonotary, by which the process of the court could be used to compel the appearance of Devine and other persons, so that the perpetrators of this great crime might be discovered and brought to that condign punishment which they so well deserve. I said I would award a writ of *habeas corpus ad testificandum* to bring up Devine from prison, but that he ought to have counsel present to advise with and instruct him as to his rights as a witness. No application, however, was made to me for the writ during that day, which was Saturday, October 3, 1868. It now appears that Devine was discharged from prison that same night. The committing magistrate, by whom he was discharged, has not been produced, and we have no evidence as to who went his bail. Devine himself says that he does not know. I must confess I should have been better satisfied if the bail



had been brought before me to be examined as a witness. No subpoena was taken out against Devine on Monday, nor any charge preferred against him. When the court met at 12 o'clock m. on that day, according to adjournment, a motion was made for a writ of *habeas corpus*, but no petition and affidavit were presented. I would have allowed time, however, to prepare them, issued the writ, and waited for its return. It being suggested, however, that Devine was present in court, I directed his name to be called. He answered and appeared. On his subsequent examination he said that he had come of his own accord, without suggestion or advice from anybody, because he understood from what he read in a Sunday newspaper that he was to be tried. I think it somewhat remarkable that this man, upon whose person these blank certificates were found, had thus the most ample opportunity, if he was guilty, to fly from justice or to avoid appearing as a witness in this case. Being without counsel, he was carefully instructed by me, before giving his testimony, that he had a right to decline to answer any question which would either criminate or tend to criminate himself. He submitted to answer and did to all appearance answer every question fully. I see no reason whatever to doubt the truth of his testimony. It was clear, consistent with the testimony of the other witnesses, and consistent with itself. No contradiction has been attempted to be pointed out. No man, I think, can entertain the belief for a moment that he, John Devine, either stole these blanks out of the office or forged the names. The presumption in the first instance undoubtedly is that they were in his possession for an unlawful and guilty purpose. I do not believe on the evidence, however, that he knew that these papers were in his possession, or at all events what they were. Nor do I believe that they were given to him or put in his pocket for election purposes. The man or men who would commit the crime of purloining and forging them would not select such an agent to consummate it. I have come to the conclusion, after full consideration and weighing all the circumstances, that John Devine, on the night or early morning of his arrest, at the corner of Jefferson avenue and Washington street, fell among his enemies, personal or political. His worst enemy, indeed, was that which he had "put into his mouth to steal away his brains." Like Cassio, when he awoke later in the day, he remembered "a mass of things, but nothing distinctly; a quarrel, but nothing wherefore." That he was drunk the police officer, who arrested him for snapping a pistol at a man and his wife crossing the street, testifies, and he himself confesses it. He remembers nothing about the quarrel, the pistol, or the papers. He admits the watch and the money, which were taken from him and afterward returned, though he found the money much less than he expected, which is not surprising considering the manner in which, by his own account, he had spent the day. The pistol was not returned to him, and it has not been produced here, so that he might say whether it was his or not. Not a single witness has been called who was present when the arrest is made, to tell us who were there and how the quarrel arose—for there were loud words, says the policeman—not even the man and his wife who were crossing the street and at whom it was said the pistol was snapped. Some person or persons followed the officer and him after the arrest. At the door of the station-house, as he was going down the steps, Devine was assaulted from behind, and struck a severe blow, or blows, on the head with some blunt instrument. He was stunned. This is his own account, and the officer testifies to the same thing. He, the officer, says there was no one at the station-house to receive the prisoner, and that he could not, therefore, arrest the assailant without letting him go. I think he would have been perfectly justified in doing so, even if Devine had escaped, which was not very likely in his then condition. He did not call for help nor spring his rattle. He does not know who the assailant was, and I suppose the perpetrators of this gross outrage will never be brought to justice. When Devine awoke from his drunken debauch he found his hair clotted with blood and gore, and requested in vain for some one to wash and dress it, offering to pay. When the other prisoners were sent down to prison he wished to go also, and asked why he was not taken. He says that the officer in charge, whom he named, answered that "they wanted to make use of him." No one has been produced to contradict these statements of Devine, or to explain them. I very much regret this for the sake of the character of the administration of the law. If I thought that Devine had possession of these papers knowingly, and for a fraudulent purpose, I would feel myself bound of my own motion to order his arrest, and to commit him to prison or bind him over to answer the charge before the proper tribunal. But I think that the evidence before me corroborates his own statement that he was in possession of these papers without guilt on his part, and I therefore make no order in regard to him.

Rule discharged.

I certify that the within and foregoing is a true copy of the opinion delivered by Justice Sharswood in the above case.

In witness whereof, I have hereunto set my hand and affixed the seal of the said court at Philadelphia, this 18th day of February, 1869.

[SEAL.]

JAMES ROSS SNOWDEN,

Prothonotary.



*To the honorable the judges of the supreme court in and for the eastern district of Pennsylvania:*

The petition of the undersigned citizens of the United States of America and of the State of Pennsylvania, and resident voters within the city and county of Philadelphia, respectfully represent:

I. That it appears from the records of this court, in the matter of the admission to citizenship in the following cases on the following days, namely: Thomas Nagley, September 18, A. D. 1868; Moses Paper, September 18, A. D. 1868; John Nugent, September 18, A. D. 1868; Daniel Bradley, September 18, A. D. 1868; Edward Wright, September 18, A. D. 1868; Michael McGrath, September 18, A. D. 1868; Patrick Gallagher, September 18, A. D. 1868; Francis McShane, September 19, A. D. 1868; John Keenan, September 19, A. D. 1868; Pat. McQuillen, September 19, A. D. 1868; John McGarrity, September 21, A. D. 1868; Dennis King, September 21, A. D. 1868; Hugh Loughrey, September 22, A. D. 1868; Richard Sommers, September 22, A. D. 1868; James Skelly, September 23, A. D. 1868; Thomas Gibbons, September 23, A. D. 1868; John McGonnigle, September 23, A. D. 1868; John Cronin, September 23, A. D. 1868; Felix Heneger, September 23, A. D. 1868; Thomas Donohue, September 23, A. D. 1868; George Wilton, September 23, A. D. 1868; George Daniels, September 23, A. D. 1868; William Halloway, September 23, A. D. 1868; Edward Harly, September 23, A. D. 1868; Thomas Phillips, September 23, A. D. 1868; Andrew Quinn, September 23, A. D. 1868, wherein the said parties aforesaid had not made any previous declaration of intention to become citizens of the United States before a court of record, as provided by the statutes of the United States, and were without a certificate of such declaration of intention; the place or places where the said applicants respectively have resided for five years immediately preceding the time of their application are not stated and set forth in the record of the court admitting such applicants, as required by the said statutes, and that, nevertheless, certificates of naturalization have been issued to them respectively by the prothonotary of your said court.

II. That it appears from the record of this court of the admission to citizenship in the following cases, twenty-seven in number, upon the 21st, 22d, 23d, and 24th days of September, one and the same person, to wit, James A. Watson, was the only voucher, viz:

John Collins, Martin Hunt, and Michael Cochran, on September 21, A. D. 1868.

Peter Leonard, James Phalen, Michael O'Connel, on September 22, A. D. 1868.

Martin McAvoy, James Broadly, Patrick Boyle, Michael Finnegan, Michael Friel, Henry Winters, William Bennett, Michael Docherty, on September 23, A. D. 1868.

John Graham, Henry Riley, Frederick Baur, Patrick Dorian, John Moore, David Carroll, William McCauley, Patrick Coffee, Henry Smith, James Owens, Michael Cavanagh, Daniel McFadden, John Gabel, on September 24, A. D. 1868.

III. That in the following cases each of the said applicants vouched for the other, when of necessity one of them must have been not a citizen of the United States at the time he so vouched, viz: on the 21st of September, A. D. 1868, Henry Ernst vouched for Henry Holl, and Henry Holl vouched for Henry Ernst.

Your petitioners, therefore, pray the court to grant a rule upon the parties above named who have been admitted to citizenship, to show cause why the admissions to citizenship in their cases, and all the proceedings had therein in reference to said admissions, as appear by the records of this court, shall not be vacated, and also to show cause why an order should not issue to direct that the certificates of naturalization issued to the said parties be delivered up to the prothonotary of your said court to be canceled by him.

And your petitioners will ever pray, &c.

CHARLES E. WARBURTON.  
WATSON AMBRUSTER.

A. J. McCLEARY.

EDWARD PENINGTON, JR.

JAMES H. ORNE.

STEPHEN A. CALDWELL.

ELISHA H. HUNT.

T. R. DAWSON.

L. D. JUDD.

N. B. BROWNE.

Refused because not sworn to.

J. T.

Since the above entry was made the paper attached as part of the sheets following sheets. It was understood by me as a separate petition.

J. T.

CITY OF PHILADELPHIA, ss:

Alexander J. McCleary, of the city of Philadelphia, being duly sworn according to law, deposes and says that he is a reporter of the Evening Telegraph, a newspaper



published in the city of Philadelphia, and that within the last few days he has had occasion, in the discharge of his business, to visit the office of the prothonotary of the supreme court in and for the eastern district of Pennsylvania, and inspect a portion of the records of naturalization recorded in said office, and that—

I. From personal inspection and supervision, find that the following named persons on the days mentioned—to wit, on September 18, 1868: Moses Paper, John Nugent, Edward Wright, Thomas Nagley, Daniel Bradley, Michael McGrath, and Patrick Gallagher;

On September 19, A. D. 1868: Francis McShane, John Keenan, and Pat. McQuillen;

On September 21, A. D. 1868: John McGarrity and Dennis King;

On September 22, A. D. 1868: Hugh Loughrey and Richard Somers;

On September 23, A. D. 1868: James Skelly, John McGonigle, Felix Henegen, Thomas Gibbons, John Cronin, Thomas Donohue, George Wilton, William Halloway, Thomas Phillips, George Daniels, Edward Harley, and Andrew Quinn—were admitted to citizenship of the United States of America by the said supreme court, and that the records of the said office do not contain the residences of any of the persons aforesaid.

II. And that they find among said records the following named persons on the following named days—to wit:

On September 21, A. D. 1868: John Collins, Martin Hunt, and Michael Cochran;

On September 22, A. D. 1868: Peter Leonard, James Phalen, and Michael O'Connell;

On September 23, A. D. 1868: John Graham, Henry Riley, Frederick Bauer, Patrick Dorlan, John Moore, David Carroll, William McCauley, Patrick Coffee, Henry Smith, James Owens, Michael Kavanaugh, Daniel McFadden, and John Gabel—were admitted to citizenship of the United States of America by the said supreme court, and that the said records show that all the said parties were vouched for by one and the same man, to wit, James A. Watson.

III. And that on the 21st of September, A. D. 1868, Henry Ernst vouched for Henry Holl, and Henry Holl vouched for Henry Ernst.

A. J. McCLEARY.

Personally appeared before me Alexander J. McCleary, and being duly sworn, deposes and says that the facts set forth in the above affidavit are true, except the last clause of the third statement in regard to the case of Louis Gosh, of which case he personally knew nothing.

A. J. McCLEARY.

Sworn and subscribed before me this 5th day of October, A. D. 1868.

DAVID BEITLER, *Alderman*.

[Copy of indorsement.]

Petition of Alex. J. McCleary and others for a rule on within-named persons to show cause why their admission to citizenship should not be vacated, and the certificates to said admission should not be delivered up to the prothonotary to be canceled by him.

OCTOBER 6, 1868.—Rule granted as per opinion filed, and application refused as to other persons named. See opinion as filed.—T.

Filed October 5, 1868.

In the matter of the petition of A. J. McCleary for a rule on Moses Paper and others in said petition mentioned for a rule to show cause why their admission to citizenship should not be revoked, and the certificates of said admission should not be delivered up to be canceled:

I have concluded to grant the rule as prayed for in the case of Henry Ernst and Henry Holl, who it is set forth were naturalized on the 21st of September ultimo. The cause alleged is that each of these persons vouched for the other, and consequently that one of them must have been an alien when he was received as voucher.

I shall grant the rule; but it is done on the condition that the attorney general shall appear on the record to prosecute the rule. One citizen cannot impugn the action of a court in naturalization cases so far as to require the cancellation of naturalization papers. Some public authority must do this, and I understood when this petition was handed up that the attorney general was to be the official party to the proceeding; yet his name does not appear on it as an actor. That can be made right now, if that officer chooses. Even then it is a most serious question how far and in what manner this court can act. If the certificates were in the possession of the court, no difficulty would arise; it could be canceled without doubt; but whether I have the power to proceed as in equity or otherwise, and compel the party to give it up, or in default to make a decree invalidating it, is not clear, and will be the subject of consideration on return of the rule. Reserving these questions and not deciding them *in limine*, I will grant the rule in the cases above mentioned in the name of the attorney general, if he files his assent to it. If no such power exists as is attempted to be invoked, I think it



ought to be conferred by competent legislative action, and not to remain questionable as it is.

And now, October 6th, rule granted upon Henry Ernst and Henry Holl, in accordance with the prayer of the petitioners and to certain grounds charged for the application, returnable on Saturday, the 10th instant, at 10 o'clock a. m., at the supreme court rooms in this city. Personal service of the rule twenty-four hours previously to said time is required. *Per curiam.*

[Copy of indorsement.]

In the matter of the petition of A. J. McCleary *et al.* Opinion of Thompson, C. J.  
Filed October 6, 1868.

*Additional opinion.*

There is a ground for a rule contained in a portion of the petition which was understood to be an unsworn paper, and refused for that reason; but as it has been said by counsel that it was to be attached to that sworn to, and has been so attached, I must notice it.

The rule is asked against Thomas Nagely and twenty-four others, who are charged with procuring naturalization certificates without a previous declaration of intention, but it is not stated whether they were naturalized on minority proofs, where a previous declaration of intention is not required, or where such a declaration is required. We cannot, therefore, tell to which class the persons named belong, and cannot aid the defect in the petition for want of the proper averment. The rule is refused, therefore, on this ground of complaint.

Read in open court, October 6, A. D. 1868, and to be filed with the opinion read this morning.

THOMPSON, C. J.

[Copy of indorsement.]

Additional opinion in the matter of the petition of Alexander J. McCleary *et al.* To be filed.—J. T.

Filed October 6, 1868.

And now, 6th day of October, A. D. 1868, in the matter of A. J. McCleary, *et alia sur*, prayer for rule on Henry Ernst and Henry Holl, the attorney general appears in open court and asks officially that said rule shall be granted as prayed for, and in manner as the same is granted by the court and set forth in the opinion of the chief justice now on file in said case.

BENJAMIN HARRIS BREWSTER,  
*Attorney General.*

[Copy of indorsement.]

Rule in the matter of Henry Ernst and Henry Holl, October 6, 1868. Allowed.—Thompson, C. J.

Filed October 6, 1868.

And now, October 12, 1868, the within-named petitioner, Henry Ernst, having surrendered his certificate granted on the 21st instant, and having prayed leave to file a new petition on the grounds appearing indorsed on his certificate, it is allowed, and this certificate is to remain on file. *Per curiam.*

THOMPSON, C. J.

Henry Ernst came into court and prays leave to surrender his certificate because of charges that he was illegally vouched for by Henry Holl. The truth of which charge he cannot affirm or deny, as he does not recollect whether said Holl was sworn as a citizen at the time or not, and prays leave to prove his residence by Nicholas Newling, and to procure a new certificate. He further declares that he was not aware of anything wrong in the circumstance of Holl vouching for him.

HENRY EARNEST.

Sworn in open court October 12, 1868.

J. R. SNOWDEN, *Prothonotary.*

Erasures by me.

THOMPSON, C. J.

Let the petitioner present a new petition. *Per curiam.*

October 12, 1868. New petition filed and naturalization certificate granted.

J. T.



STATE OF PENNSYLVANIA, *Philadelphia County*, ss :

I certify that the foregoing is a full and true copy of the record and proceedings in the case of the rules herein stated.

Witness my hand and the seal of the said court this 23d day of January, A. D. 1869.

[SEAL.]

JAMES ROSS SNOWDEN,  
Prothonotary.

Among the records of the supreme court of Pennsylvania in and for the eastern district, the following is contained :

*In the matter of the petition of W. J. McCleary and others for a rule to show cause why certain certificates of naturalization should not be revoked.*

OPINION OF CHIEF JUSTICE THOMPSON.

The rule prayed for against Moses Paper, John Nugent, and twenty-five others, on the ground "that the records of the supreme court do not contain the residences of any of the persons aforesaid," must be refused for the reason that there is nothing in the acts of Congress requiring the residences of applicants for naturalization to be set forth, excepting only the residence in the United States and State. It is not alleged that that has not been done in the cases of the persons named in the petition.

If it be meant that the numbers of the residences of the applicants are not marked on the papers, it is not only necessary to say that no such requirement is to be found in the law, and the omission would not vitiate the papers. My brother Sharswood, who held the *nisi prius* before which the persons named were naturalized, gave directions to the clerks to mark the numbers of the residence of vouchers and applicants on the papers before swearing them, in order that false swearing and fraudulent practices might be detected. This was the first time this precaution was ever taken in any court, as I am informed, in this city; but a failure to observe it he did not declare should vitiate the papers granted. He had no power to make such order or declaration, and did not do it, nor attempt to do it. The omission is but an irregularity at best in the order of proceeding, without effect on the petitioner whatever. Neither by accident nor design could the omission affect the applicant, as he was not required by law to set forth his exact place of residence. The order was in the nature of a police regulation or precaution, and not a condition of citizenship. This ground of application for the rule is therefore refused.

The application for a rule against John Collins, Martin Hunt, and twenty-five others, because vouched for by one and the same individual on different days, as set forth in the petition, viz., James A. Watson, is also refused. There is no allegation that this was fraudulently done, or that the voucher swore falsely when he attested to his knowledge of the residences of the persons named in the State and United States, &c. The application stands solely on the ground, therefore, that it is illegal for one man to prove the residence of more than one applicant. This is entirely an untenable ground. A witness may legally vouch for as many persons as he has sufficient knowledge of to enable him to avouch accurately, and this has always been the practice. Nor is it to my mind at all wonderful, or of itself a circumstance of suspicion, that in this city, the largest manufacturing community in the United States, containing establishments many of them employing hundreds of operatives constantly, that their employers, or one of the number, might know twenty-five or even fifty or one hundred persons engaged about such establishments and know of their residences in the United States five years, or that he might know the operatives in neighboring establishments as well as the one in which he might be employed. Countrymen from the same lands, and especially fellow-craftsmen, are very likely to remember each other, and to keep up an acquaintance once made under such circumstances. So, too, where there are so many beneficial and relief institutions as in this city, it is easy to understand how a member might be able to vouch for the national and State residence of any number of his fellow associates, if they have been in such association for the requisite periods. We must, however, presume the court to have been satisfied as to the voucher's knowledge, before admitting the applicant for naturalization to be sworn. The seal of the court closes the controversy as to this, unless it be alleged that the voucher has sworn falsely and the naturalization papers fraudulently obtained. In such a case, the attorney general becoming the actor and asking for a rule, I would be disposed to grant it. Nothing like this, however, appears on this paper, and the application for the rule on the ground noticed is dismissed. *Per curiam.*

[Copy of indorsement.]

In the matter of the petition of W. J. McCleary and others, for rule to show cause why certain certificates of naturalization should not be revoked. Rule dismissed. Opinion of Thompson, C. J.

Filed October 12, 1868.



STATE OF PENNSYLVANIA, *Philadelphia County*, ss :

I, James Ross Snowden, prothonotary of the supreme court of Pennsylvania in and for the eastern district, do hereby certify that foregoing is a true copy of the opinion of the court in the matter of the petition above mentioned, as filed of record in said court, on the 12th day of October, A. D. 1868.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at the city of Philadelphia, this 18th day of January, A. D. 1869.

[SEAL.]

JAMES ROSS SNOWDEN, *Prothonotary*.

Thus stated, no just and equally-balanced mind can vary from dismissing the doubt endeavored to be cast upon the legality of the naturalizations issued by the court sitting at *nisi prius* in the State of Pennsylvania and city of Philadelphia. The minority congratulate themselves upon the fact that the author and mouth-piece of said majority have waived a reliance upon the contestant's claim in respect to these naturalizations.

The next most important matter to examine is the returns made in the sixth and seventh divisions of the Seventeenth ward, which the majority of the committee have adjudged should be thrown out. From the testimony of four election officers in these two divisions we find, in fact, that the election in those districts was conducted properly, lawfully, and legally; that no disorder of any serious character or of any sort took place at either of these polls, showing that no intimidation or effort was made to prevent those entitled to the privilege from voting.

Mr. John Tomlinson, republican inside window inspector, testifies as follows as to sixth division of the Seventeenth ward:

JOHN TOMLINSON, being duly sworn, doth depose and say :

By Mr. FAUNCE :

Question. When you were examined as contestant's witness, did you state that you were an officer in the sixth division of the Seventeenth ward; and if so, please state what officer?—Answer. I was minority window inspector.

Q. Was there any qualified citizens of said division deprived of their right to vote on that day?—A. None that I know of.

Q. To what political party do you belong?—A. I belong to the republican party. I generally vote that ticket.

Re-examined by Mr. Faunce :

Q. Who put the tickets into the box?—A. I did.

Q. Was not the election in said division conducted properly, lawfully, and legally?—A. I am not posted on the laws of election; but I saw nothing inside that I suspicioned any foul play about. I had not the chance to see the list of taxables, to see whether a man's name was on the list when he came up to vote.

Q. Would Mr. McGuckin have refused to show you the list had you desired?—A. That I can't say; I did not ask him.

Mr. James McGuckin, the other inside window inspector, testifies as follows as to sixth division of Seventeenth ward :

JAMES MCGUCKIN, being duly sworn, deposes and says :

By Mr. HIRST, jr. :

Question. Where do you reside?—Answer. 1408 Cadwallader street, sixth division of the Seventeenth ward.

Q. Were you an election officer in that division; and, if so, what were your duties?—A. I was majority window inspector; I kept the tally list of the list of taxables; that is, I mean the list of taxables.

Q. Did you mark the letter V opposite the name of each voter on the list of taxables as they voted?—A. I did; I might have missed a few.

Q. Was not the election in the sixth election division of the Seventeenth ward conducted in every manner legally and according to all the requirements of laws regulating elections?—A. It was, to the best of my knowledge and opinion, and the rest of my brother officers so said while in the room.



Mr. James Mahoney testifies as follows as to the seventh division of the Seventeenth ward:

JAMES MAHONEY, being duly sworn, deposes and says:

By Mr. FAUNCE:

Question. Where do you reside?—Answer. 1532 Bodine street, in the seventh division of the Seventeenth ward.

Q. Were you an election officer in the seventh division of the Seventeenth ward at the election held on the 13th day of October last?—A. I was the majority window inspector.

Q. How was the election conducted in said division on the 13th of October last?—A. Conducted properly, as I thought.

Q. Was anything said—if so, what was said, as to the election being conducted in a proper manner.

(Question objected to, because the best evidence the witness could give would be a statement of the manner in which the election was conducted. It will be for Congress to decide whether it was conducted in the proper manner.)

A. As soon as the window was closed, some of the republican officers (I am not certain whether they all did or not—that I cannot say) returned me and the rest of the democratic officers their thanks for the manner in which we conducted the election. Mr. Carson, who was the window inspector's clerk, seemed to be jubilant in regard to the way the election was conducted. He was a republican officer.

Thus it is established beyond cavil or dispute, that in the sixth division of the Seventeenth ward nothing was done even to occasion suspicion of "foul play" on the part of the republican officer who handled the tickets put into the box during the entire day. This statement of facts is fully corroborated by Mr. James McGuckin, the other inside window inspector.

In reference to the seventh division of the Seventeenth ward. Mr. James Mahoney's testimony exhibits that everything was conducted in that division in such manner as to meet the entire approval of the republican election officers during the day, and when they came to separate the democratic officers received the thanks of their political opponents for their fairness. It is attempted to impugn the votes of eighty-seven voters not assessed in the sixth division, many of whom were well known to the citizens, not being even challenged, and were without doubt fully entitled to vote in said division; but the evidence nowhere discloses the fact for whom these voters cast their ballots for Congress, and may with as much propriety and reason be deducted from Mr. Myers as from Mr. Moffet. It is a well settled principle of law that no citizen shall be deprived of his vote or be disfranchised by reason of any neglect on the part of an officer of the election; hence from the evidence we conclude there is neither reason nor justice in throwing out the entire vote of this division, and in the absence of testimony showing that the eighty-seven who were unassessed and voted were fraudulent, should either invalidate the entire poll or be deducted from either candidate.

That same state of facts exists as to the seventh division of the Seventeenth ward, except that the contestant made effort to prove his entire vote as cast for him in this division. In this he failed, being able to show but forty out of eighty-five given in by the election returns. Seventy-two unassessed votes are again impugned in this division; and it is manifest they were as likely to have been given to one as the other of the candidates.

As to personizations alleged in these two divisions, a careful reading of the testimony shows that they were not personizations but different men of the same names. In three cases they appear to be father and son of the same name.

We, the minority, are therefore of opinion that these two divisions



should be computed in the count and not cast out apparently for the object of bringing about a desired result.

The claim of the sitting member for 53 votes in the eighth division of the Nineteenth ward the minority do not allow, it being plain that such change of result as claimed in that division was produced by a transposition of the figures, giving Mr. Moffet 47 votes and Mr. Myers 23; whereas it should have been 47 votes for Mr. Myers and 23 for Mr. Moffet, as it was computed by returned judges. This disallowance does not therefore affect the result.

The next division which requires attention and examination is the tenth division of Nineteenth ward. From testimony here inserted it appears that this poll was taken possession of by a mob of men and the election officers driven by force from the room wherein the election was held and not allowed during the day to perform any part in connection with their assigned duty as election officers of said division.

EMANUEL HOOPER, being duly sworn, doth depose and say:

By Mr. FAUNCE:

Question. Where do you live?—Answer. 2009 Amber street, in the tenth division of the Nineteenth ward.

Q. Were you the lawful judge of election of the tenth division of the Nineteenth ward, and were you such on Tuesday, October 13, 1868?

(Objected to.)

A. Yes.

Q. Who were the other lawful election officers of the tenth division of the Nineteenth ward at the election held on the 13th of October last?—A. Peter Brower was return inspector. Nathan L. Potts was the other that was elected, but he had moved out of the division. The minority judge appointed Thomas Jones to act in his place. The window inspector was Thomas Berryman and John Henry elected; he being in the fourteenth division, appointed James Rafferty to act in his place.

Q. Did you, as the lawful judge, act as judge of election in the tenth division of the Nineteenth ward at the election on the 13th of October last?

(Objected to.)

A. They wouldn't let me; I was drove away; I did not act; I couldn't.

Q. Please state in your own way why you did not act as judge in said division on the 13th of October last.—A. I went there in conjunction with James Rafferty, Thomas Jones, Peter Brower, and the clerks. We went in the room and began to arrange the books and fix up things at the window, and so on. I believe it was about twenty minutes of seven that we went in, as near as I can recollect. I was putting the table right and putting the board up at the window and arranging things in order; some eight or ten men came in, headed by Theodore Hackett, the day sergeant of the police; Simpson, in the comptroller's office was another, and a candidate for school directory named Lefferd. He came in and he ordered me out; he said I had no right there; he said we are going to conduct the election here to-day. He came up a little closer to me, and I told him I thought a police officer's duty was to keep thirty feet from the polls; I ordered him out after a good bit of talking; I left him talk on, as it was no use. He talked away a good while; he ordered me out again, and I told him I wouldn't go; he went to the door and he brought two police in and forced me and dragged me out. Brower, I believe, after I was outside, I looked around and asked him what he was outside for, and he said he had been served the same way. We went outside, and met James Rafferty, the other window inspector; he told me that he when he saw we two served alike he thought that he had better make way with the election papers, as he thought he would be served the same. We went down the city to get some advice from a lawyer about the matter, who advised us to wait until the court opened, and see Judge Allison. We went and seen Judge Allison, and laid the case before him; I showed him my certificate; he consulted with the lawyer there at the time.

(Objected to.)

He sent for Purdon's Digest, read the law, and decided or thought I was the legal judge. Said I appeared to be the legal judge. I told him how I had been treated, and he issued warrants for the arrest of the policemen. He told me to go back and demand my right to act as judge, and if any one molested me to come back to him and he would issue warrants for their arrest. I went back, and when I got back in the room I should judge there were fifty or seventy-five men there—that is, the tavern or outer room before you get in; I looked around, and found they were principally from other precincts; I couldn't recognize five that were in the room. I walked through the room to the precinct door; the room was about thirty feet long, and I went through it. I knocked



several times, and two or three men from the outside got around me and told me that I couldn't go in there to-day; they were going to do things as they liked that day. I found it was useless to go any further, and made my way out to go down to the judge. I got about the middle of the room, and the first thing I knew I was knocked back of the head; the further I went the more I got, and I got out of the door the best way I could; I was struck just as I got out of the door, that knocked me pretty near senseless, with what I thought was a slung shot, for it took the skin off my jaw and pretty near broke it. The one that struck I afterward learned was one that was appointed by the mayor a deputy that day; his name was David Martin, from the fourth precinct. Outside I was knocked down, and I picked myself up as best I could, and the first thing I knew I was taken to the hall by another deputy named Hoffman. While that was going on there were four policemen stood opposite, seen all that was transacted. I was afterward released on *habeas corpus*.

Q. Were the policemen who thus treated you afterward arrested under the writ issued by Judge Allison, and taken before his honor?

(Objected to.)

A. I was took out that day, about three hours after I was arrested, under a writ of *habeas corpus*, before Judges Allison and Ludlow. In the mean time I was out under bail from Alderman Heins here. I didn't go down because I was not out. The officers, I understand, were held for a further hearing.

Q. Did you afterward appear as witness against these officers?—A. Yes; the Saturday morning after, in court.

Q. Did Judge Allison, sitting as committing magistrate, bind them over at that hearing to appear at court?

(Objected to, because only provable by record.)

A. Yes, he held them in \$500 each.

Q. How many persons voted in the tenth division of the Nineteenth ward at the last October election?—A. There were two hundred and nineteen on the lists as voted.

Q. How many names are there upon the assessor's list of the tenth division of the Nineteenth ward for the year 1868?—A. There are four hundred and forty-three on the regular assessment and forty on the extra.

Q. Have you got the assessor's list of said division with you?—A. Yes, sir; here is the regular assessment; here is the extra assessment.

(Offered and marked "Exhibit J.")

Q. Did or did not the action of the police in said division on the day of the October election intimidate and prevent a number of qualified citizens from voting in said division at the last October election?

(Objected to.)

A. When I came out of the station-house I was threatened before I got my private papers. I was coming up from the cell to get my papers. He followed me up, and the lieutenant had to take hold. He attempted to strike me. The lieutenant called at him, and I went away. He followed me out, and I had to run in order not to be struck, and two policemen witnessed it, too. I was told if I came near the polls that day they would kill me, by two different individuals.

Q. Did you vote in said division at the October election?—A. No.

Q. Please state, if you know, about how many democratic electors staid away from the election in said division through the conduct of the said police officers and rioters.

(Objected to.)

A. I should judge there were full one hundred; from that to one hundred and twenty-five.

Q. Please state, if you know who, after your expulsion from said polls by the police and rioters, the names of the persons who usurped the places of the said legal officers of the tenth division of the Nineteenth ward, on the 13th of October last.

(Objected to.)

A. The judge was John C. Addis, living in the fourteenth precinct at the time. Nathan L. Potts was the return inspector, living in the sixth division at the time. The clerk was the same. The other two were Albert Hyde and Peter Faunce, both living in the division. Thomas Berryman was the only legal officer that was living in the precinct, there; he was window inspector.

Cross-examined by Mr. LONGSTRETH:

Q. You have said that you were the lawful judge of election in the tenth division of the Nineteenth ward on the 13th of October, 1868; when were you so elected?—A. The precinct was divided somewhere about the latter end of April or the beginning of May, 1868. John C. Addis was elected judge in October, 1867, in the tenth precinct, which now comprises the tenth and the fourteenth. He appointed me judge of the tenth, he then living in the fourteenth. Previous to his doing of it we called on William B. Mann for his opinion—the late district attorney.

Q. When were you appointed?—A. On the 8th day of May, 1868.

Q. Was that appointment in writing, or verbal?—A. In writing.



Q. Where is it?—A. When I went to Mr. Mann he drew a line out in this style. He said to Mr. Addis, where do you live? He says in the fourteenth. (Contestant's counsel here objects to the witness in answer to a question, where his appointment is introducing irrelevant and hearsay evidence.) He says if you live here you appoint for there. He said if you live in the fourteenth you appoint for the tenth; and so on, he says, with the inspectors; if the inspector lives in the tenth he appoints for the fourteenth, and if he lives in the fourteenth he appoints for the tenth. When we were going out of the office Mr. Mann said he would give us a legal written opinion if it was required. We took the paper he had drawn out, and said it was not necessary. Here is the copy of the certificate which Mr. Addis gave me. The original certificate was left in some lawyer's office, and could not be found; Judge Allison seen and a half a dozen in the room seen it.

Q. By whom was this copy made?—A. By myself.

Q. Is this the only copy of it you have?—A. I believe I have one at home.

Q. Have you any objection to this copy which you have produced being attached to the record as part of your testimony?—A. Not if you will give me another copy. You can copy it off and give me the original.

Q. Why do you object to having this copy you have produced being attached?—A. I have no objection; but you had better take a copy and give me the original.

[Copy.]

MAY 8, 1868.

This is to certify that I appoint Emanuel Hooper judge of the tenth division of the Nineteenth ward, now judge of the fourteenth division, late a part of the tenth division of the Nineteenth ward.

JOHN C. ADDIS.

Q. When did you make this copy?—A. I wrote this copy out this morning.

Q. Had you the original before you when you wrote out that copy?—A. No, sir.

Q. How long is it since you saw the original?—A. A couple of months or more. It was down among the other papers. I am positive that is a correct copy. I have read it a hundred times and more, having it in my possession six months or more before the election.

Q. Do you mean, then, that what you call a copy was written from your recollection of the terms of the original paper?—A. From my recollection. I am positive, having so many times looked at it, that it is a correct copy.

Q. Did you act at any election under this appointment?—A. There was no election before October.

Q. What is your age and occupation?—A. My age is forty-seven, and my trade is a glove cutter.

Q. When you got to the polls on that morning, was John C. Addis there?—A. When I went in he was not there; he came in afterward.

Q. Did he come in before or after Hackett and the others you have alluded to?—A. He came in just after Hackett. Hackett was the first man I recognized.

Q. Was that before or after seven o'clock?—A. I should judge it was about a quarter of seven o'clock, or 10 minutes before.

Q. Did Addis say anything to you on that occasion?—A. He said he was going to act there that day. I said to him, you appointed me, and if there had been any alteration in the contract you ought to have let me know the day or night before, and I should not have come.

Q. Why did you not mention Addis's name when you were describing, in your examination-in-chief, what took place at the polls on that occasion?—A. I did not recognize Addis until four or five minutes after Hackett ordered me out. Hackett ordered me out twice before I saw Addis.

Q. Are you sure that your original appointment as judge had not the signature of either of the inspectors on it?—A. Yes, sir. I have half a dozen persons here in the room that could swear to it.

Q. Do you not know or had you not been advised before the last October election that this appointment by Addis alone was void?—A. No, sir.

Q. What has become of your prosecution against Hackett, Simpson, and Lefferts?—A. Lefferts and Simpson were never prosecuted by me. Hackett and two other policemen were prosecuted, but I have never had notice to appear at court. But I have heard about a month after that the bill was ignored without my knowledge. This is all I know.

Q. Did you appear at the grand jury room on the first day of the term to which these people were bound over to prosecute your complaint?—A. I had no notice of it.

Q. Were you not in court when they were bound over?—A. Yes, sir.

Q. On what charge were they bound over?—A. I don't know exactly; interfering with the officers, I should judge.



Q. Were they not bound over simply to answer a charge of assault and battery?—A. Not to my knowledge. I understood it the other way.

Q. When was Peter Brower elected return inspector of the tenth division of the Nineteenth ward?—A. On the 2d Tuesday in October, 1867.

Q. Did you hear him ordered out of the room?—A. I seen them bringing him out.

Q. Was the other return inspector in the room at the time?—A. Do you mean the one that was elected? Yes; and the one the minority judge appointed was there too.

Q. Was John Henry one of the window inspectors that you say was elected there that morning?—A. No; he served in the fourteenth.

Q. When you were before Judge Allison on the morning of election day, did you tell him that John C. Addis had before the time for the polls to open revoked your appointment as judge?—A. I did not, for he did not revoke it.

Q. What did you mean, then, by saying a little while ago that John C. Addis on that morning, a few minutes before 7 o'clock, told you in the room where the election in that division was to be held, that he himself was going to act as judge there that day?—A. I met him some weeks before in the street. I told him I had heard of rumors; some people wishing him to revoke the appointment. He said no one had been to him, but if all the men in the precinct would come he would not do it. He said he didn't think he would have any legal right to do it if he was disposed to do it. Mr. Buckley was with me at the time he used those words; that was in the month of August.

Q. Did you tell Judge Allison, on that morning, what Mr. Addis had said to you at the polls?—A. No; I don't remember that; he never asked me the question. When I went there and told him of the three policemen he seemed very much surprised, and immediately issued the warrants for them.

Q. Could you identify and can you now give me the names of any of the men from other divisions that were in the tavern when you went back there, and you were going to the room in which the election was being held?—A. When I went to the door and knocked, John Martin, from the fourth precinct, was the first man to come up to me. David Martin, his brother, who struck me, was his brother. I can't recollect others. There was one from the fifth who took a prominent part.

Q. What time did you get back from court to the polls?—A. About 11 o'clock.

Q. Did you see any of the inside officers who were conducting the election on that occasion?—A. No.

Q. Do you mean to be understood as swearing that you were kept from going to the polls to vote by fears of bodily harm, or only that you did not go because you denied the right of the persons conducting the election to hold it?

(Objected to as argumentative.)

A. I was threatened and fearful of bodily harm, and I did not think they had any right to hold the election.

Q. Have you any actual personal knowledge of any other of the one hundred or one hundred and twenty-five democratic electors you have spoken of, being kept away from the polls by fear of bodily harm?—A. I was inside all day; but I understood since there was a number kept away. I mean I was inside of the cell three hours, and in my house the balance of the time.

Q. Did you prosecute any of the men that had you on that day?—A. There was no use to throw good money after bad; have the bill ignored without being sent for.

Q. Please give me the names of the two individuals who told you if you came near the polls that day they would kill you.—A. There were two men came up to me just after I left the station-house; I do not know their names, but I know them very well by sight. I know one person who threatened to come around and burn my house down. I have got a witness of that if it is required.

Q. When you went away from the polls did you carry off with you the list of taxables and election papers?—A. No, I did not.

Re-examined by Mr. HIRST, jr.:

Q. Did, or did not, Judge Allison decide after a revision of the law, and proof of the division of the old election division, and on the signature of John C. Addis that the same John C. Addis was the last judge of election of the tenth division, decide that you were the properly qualified judge, and in open court tell you to return to the polls and take possession and carry on the election?

(Objected to.)

A. Yes.

Counsel for respondent hands witness "Exhibit G" of respondent's exhibits, which is a certified copy of the list of votes of the tenth division of the Nineteenth ward at the last October election, and asks witness to tell him the name and residence of the first voter named therein.

(Objected to.)

A. Theodore Hackett, 2128 Frankford road.

Q. Is that the same Theodore Hackett whom you have mentioned as being the sergeant of police, and who was bound over?—A. Yes.



Q. Please look at the same certified copy of the list of voters and give the names of those persons appearing thereon as voters who do not reside in that division.—A. One Lawrence Bley, 2023 Coral street, voting No. 125. He is not on the regular or extra assessment, nor never resided there. No; it is a mistake in the name.

By Mr. FAUNCE:

Q. Mr. Hooper, you have given me the names of the persons who usurped your places as election officers in the tenth division of the Nineteenth ward at the last October election. Please tell me to what political party did said persons belong?

(Objected to.)

A. They were all republicans.

Q. Then all the officers of election in the said division were republicans?

(Objected to.)

A. Yes, sir.

Re-cross-examined by Mr. LONGSTRETH:

Q. Had you not been drinking on the day of the election?—A. No, sir.

Q. Were you not noisy and abusive in your language when you came back to the tavern after being down to Judge Allison?—A. No, sir; I never opened my lips, but just knocked at the door.

Q. How long were you occupied in making your statement before Judge Allison?—A. About a quarter of an hour. I have told you before about all that was said. Judge Allison sent for Purdon's Digest to examine the law.

Q. Did anybody appear on that occasion, or was any argument made on behalf of Addis's right to act as judge?—A. No, sir; that was impossible. We came from the precinct house right down.

Q. Can you give me the words of the judge in making the decision alluded to in the first question on re-examination?—A. Mr. Hirst, jr., handed him Purdon's Digest. I handed him my certificate myself. He said, speaking to Mr. Hirst at the time, that everything appeared correct, and then Mr. Hirst asked him whether he decided I was the judge. I forgot that in the first question. He said yes.

Re-re-examined by Mr. HIRST, jr.:

Q. Did, or did not, Judge Allison direct the clerk to issue a warrant, to be placed in the hands of the mayor, for the immediate arrest of those police officers?

(Objected to.)

A. I know he ordered the clerk to issue a warrant. I don't know what officers it was; I understood it was to be immediate. He was to be up there as quick as me, I believe, was the word.

E. HOOPER.

Sworn to and subscribed this 28th day of January, A. D. 1869.

CHARLES M. CARPENTER,  
WM. R. HEINS,  
*Aldermen.*

PETER B. BROWER, being duly sworn by the uplifted hand, doth depose and say:

By Mr. FAUNCE:

Question. Where do you reside?—Answer. No. 527 Charter street, tenth precinct of the Nineteenth ward.

Q. Were you an officer in said division at the last October election?—A. I was.

Q. Please state what officer; when and how elected.—A. I was elected return inspector by the citizens of the precinct in October, 1867.

Q. Did you act as such officer in said division at the last October election?—A. I went to act, but they forced me out. I could not act.

Q. Please state in your own way all that occurred at the time you went to the polls on the morning of the 13th of October to act as election officer in said division.—A. Well, I went there about a quarter before 7; when I arrived there, there was my clerk, the other inspector and his clerk, and the judge was there, Mr. Hooper; I went inside and commenced to fix the window; the judge had received the books and papers from the county commissioners. I mean Mr. Hooper. We were about getting sworn in and I looked around and says I, "Where is the other officer of election, Mr. Berryman?" There were no one in the room but us few at that time. Just as I had inquired for Berryman there came a big crowd of men in the door, headed by Theodore Hacket and Ambrose Simpson, and a man by the name of Leffert; Addis came next; and Henry Smethurst and the telegraph operator of the station-house—his name is Potts—I don't know his first name—and twenty or thirty more. They went immediately over to Mr. Hooper; Mr. Hacket informed Mr. Hooper that he could not act as election officer there that day. He said he was election officer, and he would act as judge. There was a few words said between them. Mr. Hooper ordered the police out of the room. I immedi-



ately ordered all that didn't belong there out of the room. Hacket went to the door and called in two other officers, and he grabbed hold of Mr. Hooper. Mr. Hooper made some resistance. Hacket said, we will conduct the election ourselves. They then jerked Mr. Hooper off the chair and dragged him violently to the door. I then ordered them to leave and let him be. One of them grabbed me by the back and pushed me out of the door. The crowd then filled up the room so as I could not get back again in that door. I ran around to the other door. I met Mr. Rafferty, the other window inspector. He had the books and papers of the precinct. I looked in the room, and they were cursing and swearing there, and I thought my life was not safe there. I said, then, I guess we had better go down to the court and see what we will do. We then went down to get legal advice. We had to wait there till the court opened; the court opened; stated our case to Judge Allison; after issuing warrants for the officers—police officers—he then directed us to go back and take our seats as election officers. After looking over the Digest, he stated that we were the qualified officers. I then stated to Judge Allison that it was dangerous for us to go there. He told us to go; and return and let him know if we didn't get in. We went; rode up there in the cars; got out at Morris street; then walked up to Amber street, and went to the corner; I looked at the window where they were taking in votes. Ambrose Simpson was there, and he closed the shutters. We had to go in the bar-room to get to the door; Mr. Hooper went ahead, I followed after him—and the others followed after. Mr. Hooper knocked at the door; John Martin and William W. Bain, constable of the ward; he told him that he could not go in there; he knocked again and the door was locked from the inside; he turned to go away and he was struck by John Martin, and then there was a kick made; I don't know whether at myself or Mr. Hooper; but I was kicked by John Martin. After that I had to look out for myself; I was then struck again in the back, I don't know who; by that time Mr. Hooper got outside. I was at the door; David Martin was striking Hooper. There were three police officers on the opposite side of the street; the officers did not interfere to prevent him from getting beat. An officer went over and arrested Hooper and took him to the station-house. I found it was impossible for me to act as officer there; I started with two or three others down to court; I went before Judge Allison in court; I told him we come off short, one or two missing, locked up. He then sent us to the other court for *habeas corpus*. That was issued. We then went back to Judge Allison; he gave it to a man to serve—the *habeas corpus*. We then stayed around the court there for the rest of the officers. They didn't come, and the judge said he would issue a writ for the mayor if they didn't come, and that fetched them. They then postponed a hearing till the next day, I believe, at 10 o'clock. Then they got their hearing, and was held to bail in the sum of \$500 for appearance at court.

Q. Then I understand that, notwithstanding you were the regular elected return inspector to act at the last October election in said division, you were ejected by force from the room and the place of holding the election?

(Objected to.)

A. I was.

Q. Did you vote in said division on the 13th of October last?—A. I did not.

Q. For whom would you have voted for a member of Congress had you not been prevented from exercising your right as an elector by the police and the rioters on that day?

(Objected to.)

A. John Moffet.

Q. Please state if you know how many duly qualified democratic electors of the tenth division of the Nineteenth ward, owing to the action of the police and the rioters, were deprived of the right to vote in said division at the last October election.

(Objected to.)

A. To the best of my opinion about one hundred.

Q. Can you tell me what position Nathan H. Potts held on the 13th of October last, whom you have named as one of the usurpers in said division, and also give me the division in which he resided on the 13th of October last?

(Objected to as grossly incorrect and leading.)

A. He held the position of telegraph operator in the eleventh police district. He lived in the sixth division of the Nineteenth ward; had lived there four months. He had moved before the October election out of the tenth division.

Cross-examined by Mr. LONGSTRETH:

Q. What is your age and occupation?—A. Forty-seven on the 22d day of next February. I am a cordwainer by trade.

Q. How did it happen that you, a return inspector, having no duties to perform until 8 o'clock or after, were there so early with only the other democratic election officers, preparing for the election?—A. The law requires me to be there at 7 o'clock; that is the reason I was there.

Q. Had you any previous arrangement with the other two democratic officers whom you met there, to meet them at the polls some time previous to the hour for commence-



ing the election?—A. I had told my clerk to be there in the morning. I think that was all.

Q. Had you no arrangement with Hooper or Rafferty?—A. No, sir.

Q. Had you been sworn when you went there that morning?—A. No, sir.

Q. Were you sworn at all to act as return inspector that day?—A. I was not. They prevented me from being sworn.

Q. Who pushed you out of the door?—A. That I can't say positive. He had a uniform on—a police uniform; all but the hat.

Q. Did Addis or any other of the election officers order you to go, or make any objections to your remaining and acting as return inspector?—A. I don't remember any of them saying so. I was pushed out and could not get back again.

Q. When you went around to the other door, after being pushed out, and met Rafferty, what was there to prevent you from going into the room again?—A. Well, they were so boisterous and noisy in there, cursing and swearing, that I did not think it safe to go in. I don't consider Theodore Hackett — The last eight or nine years we have not held an election in that precinct without being disturbed by Theodore Hackett and others.

Q. Did any one say or do anything to you that morning until you attempted to interfere in the way you have detailed in favor of Hooper?—A. No; for I went directly in the room, and there were no one there until they came.

Q. When you were pushed out of the door, had the time for opening the election arrived?—A. No; I think it wanted a couple of minutes of it.

Q. Was Ambrose Simpson outside of the window when he closed the shutters?—A. He was.

Q. Was it not just the end of an hour, when the election is generally intermitted for a few minutes, for the purpose of transferring the ballots from the boxes for the hourly count?—A. That is more than I can state. I don't know the exact time.

Q. Did you mean to leave the impression by your testimony in chief that Ambrose Simpson, seeing you, closed the shutters to prevent you communicating with the officers inside through the window?—A. I don't know of any other object he could have, for he never closed the window shutters when we were taking count of votes.

Q. Did you go up to the window?—A. I did not.

Q. Was there any other further circumstances casting any impediment in the way of your acting as election officer except those you have detailed?—A. I don't think there is.

Q. Did you afterward go up to the window and offer to vote?—A. I did not. I was afraid to go there to the polls to vote for fear of bodily harm.

Q. What made you afraid?—A. Because they had always been fighting around the precinct every election, and it is impossible to get our vote in when there was no disturbance without fighting it in—especially since the police station-house has been in that division.

Q. How long has the police station-house been in that division?—A. Ten years, to my knowledge, and over.

Q. Please give me the names of all the democratic electors out of the one hundred that you have spoken of as being prevented from voting, who, to your personal knowledge, staid away from the polls through fear.—A. I can't name the whole one hundred; I can't name them.

Q. (Question repeated.)—A. Well, I was one; I can't name a hundred men staying away from the polls. I didn't make that positive assertion.

Q. I again ask you to name any democratic electors beside yourself who, to your personal knowledge, staid away from the polls that day through fear?—A. There were twenty-three democratic electors voted there, all told.

Q. I again ask you to name any democratic elector besides yourself who you know staid away from the polls that day through fear?—A. Well, I heard different men say they did, but I have every reason to believe them; but I don't know. I could name some.

Q. Please name them.—A. Frederick Farley, John Farley. I can't think of names; they slip my memory.

Q. When did Frederick Farley and John Farley tell you they were afraid to go to the polls on the day of the last October election?—A. Frederick Farley told me on election evening that it was dangerous to go up there, and he did not go and vote; and John told me one day through the week; on Friday after the election, I believe.

Q. Did either of them tell you by whom they had been threatened or deterred from going to the polls?—A. They did not.

Q. After your return from court the second time did you remain in the neighborhood of the polls?—A. I went home; my home was in the neighborhood.

Q. Could you see the window at which the votes were being received from your house?—A. No, sir.

Q. Do you know whether or not the election, after the polls were opened, was conducted quietly and peaceably?—A. Well, I was in court, with the exception of the



time I was sent up by the judge. Then it didn't appear very quiet and peaceable; I don't know further. I have been lame some since that day over it.

Q. On that occasion was not the disturbance you have mentioned confined to the bar-room of the tavern, and the striking of Hooper in the street?—A. I think it was; in the bar-room and in the street. Hooper made no resistance, nor I made no resistance.

Q. Did you see a line of voters in any way interfered with?—A. No, sir.

Q. Was Nathan H. Potts holding the position of telegraph operator at the station on the 13th day of October, 1868?—A. He was, on the 12th and on the 14th.

Q. Do you not know that he resigned before and was reappointed after the election?—A. On the evening of the 12th and on the morning of the 14th I saw him at the telegraph operating. I think it is doubtful that he did.

Q. Did you prosecute the men who put you out of the room for assault and battery?—(Objected to.)—A. Well, all the prosecution there was, was when the judge held them to bail. I didn't prosecute them.

Q. Had you acted at any previous election in that precinct as an election officer?—(Objected to.)—A. Yes, frequently. I have lived there nineteen years, and I have been election officer a good many times; a half dozen, anyhow.

Q. Did you act as election officer under your election in October, 1867, at any time previous to October, 1868?—A. No; there were no elections.

PETER B. BROWER.

Sworn to and subscribed this 28th day of January, A. D. 1869.

CHARLES M. CARPENTER,  
WM. R. HEINS,  
*Aldermen.*

JAMES RAFFERTY, being duly sworn, doth depose and say:

By Mr. FAUNCE:

Question. Where do you live?—Answer. No. 426 Otis street, tenth division of the Nineteenth ward.

Q. Were you an officer of election in said division at the election held on the 13th of October last?—A. I was appointed as an officer; window inspector.

Q. Were you the legal window inspector in said division at the last October election?—(Objected to.)

A. I was appointed by Mr. Henry the legally elected minority window inspector.

Q. Please state under what circumstances you were so appointed.—A. The division was divided, and Mr. Henry being in the new division, he appointed me for the tenth. He said he couldn't act in the old division—live in one division and act in another. He appointed me for the old.

Q. Did you act as window inspector in said division at the last October election?—A. No, sir.

Q. Please state in your own way why you did not act as such officer, and all that occurred at the time you went to the polls for the purpose of acting on the morning of the 13th of October in said division.—A. I went to the polls about quarter before seven, and, getting ready to receive votes, I saw Mr. Addis in the room. He said that he was going to act as judge of the election on that day. Mr. Hooper sat on the chair; said that he was legally appointed judge, and was going to act as judge that day. Addis said that he was going to act as judge. They began arguing. Mr. Hackett, Sergeant Hackett, came in the room and asked Mr. Addis if he wanted the room cleared. Mr. Addis said he did. Mr. Hackett and one or two more officers got hold of Mr. Hooper and ran him out of the room. Then the crowd got in the room and Mr. Brower was run out. The return inspector and I, thinking I was going to share the same fate, I took the papers away with me, and we went down to the court; Mr. Brower, Mr. Hooper, Mr. Jones, and myself. Mr. Hooper and Mr. Brower went in the court-room, and I don't know of anything that happened there; but when they came out I went up with them in the car, and they told me (objected to) that the judge told them to go up and demand their place as election officers. We got out of the car Front and Norris streets and walked up as far as Otis. I told them to stand on the corner until I went up and changed my clothes. When I had come out of the house I looked for them, but could not see them. Then I started for the division house and met Mr. Jones, who told me to turn back; that they had beat Hooper and Brower, and it wasn't safe for me to go. Then, turning toward home, I looked on the other side of the street and saw Mr. Hooper under arrest. That is all.

Q. Did you vote in said division at the October election?—A. No, sir.

Q. For whom would you have voted for a member of Congress had you not been prevented from exercising your right as an elector?—A. Mr. John Moffet.

Q. Were you or were you not kept away from the polls, on the 13th of October last, by the action of the police and the persons who were there assisting them?—A. I was



at court in the court-room some two or three hours waiting for the officers to be brought there by a warrant sent for them. I have got such a bad memory, I can't recollect that.

Q. Why did you not vote in said division?—A. I thought there was no use in voting. I didn't think the men who were there had any right to be there, and therefore didn't go.

Q. Please state how many qualified democratic electors of said division did not vote at the last October election?—A. Well, I judge from seventy to seventy-five.

Q. What has been the democratic vote of said division?—A. I suppose there was about one hundred democratic votes polled in the November election; I judge there was that many.

Q. Do you not know that there was not a large number of democratic electors in said division who did not vote at the November election?

(Objected to.)

A. I know of two that did not vote in November,

Q. Were all the officers who conducted the election alleged to have been held in the tenth division of the Nineteenth ward on last October, republicans?—A. They were all republicans.

No cross-examination.

JAMES RAFFERTY, Jr.

Sworn to and subscribed this 2<sup>nd</sup> day of January, A. D. 1869.

CHARLES M. CARPENTER,

WILLIAM R. HEINS,

*Aldermen.*

The majority, however, fail in their partial review of the evidence to look upon the proved and sworn declarations as to the force and intimidation—we may say riot—in this division. If any division vote in this congressional district ought to be declared void, this district should in our opinion have priority.

The fourth division of the Seventeenth ward is also impugned by the contestant. He claims 24 illegal votes by the sworn statement of Mr. Geo. Painter. Fourteen of these 24 alleged illegal votes are satisfactorily accounted for by the testimony of Mr. James Gilchrist, hereunto directly annexed:

JAMES GILCHRIST, being duly sworn, doth depose and say:

By Mr. HIRST, jr.:

Question. Where do you reside?—Answer. I reside at No. 240 Oxford street, seventh division of the Seventeenth ward.

Q. Where did you reside at the time of the last October election?—A. In the fourth division of the Seventeenth ward, No. 1349 Hancock street.

Q. Mr. Painter, witness called on the part of contestant, has stated under oath that he compared the list of voters with the list of taxables in the fourth division of the Seventeenth ward, with a view to ascertain how many voted whose names were not on the list of taxables, and in response to the question gave the following names: John McAllister, John McDonald, Joseph James O'Rourke, Thomas O'Rourke, E. F. Glacken, Patrick Kebler, Isaac Cohen, George Cohen, Thomas Landy, George W. Bornman, John Murphy, John Donnelly, Dominick Murphy, John Cook, Henry Black, Christian Steuben, Adam Goodfletcher, John Faber, and Walter Dewing; please tell me whether you canvassed that division and made inquiries as to these persons as to their being residents, and what was the result of those inquiries, giving them name by name and their residence?—A. I did canvass the division because I seen from one of the daily papers the evidence of Mr. Painter. I afterward made it my business to go round to those parties to their residences. John McAllister resides in Palethorpe street above Thompson, on the west side of the street. He voted his first vote in October last. John McDonald, in Girard avenue, on the north side. The reason why that he don't appear on the assessment list is that there was a dispute arose at the extra assessment, and the assessors made up their minds that each party coming to get assessed should either show naturalization papers or take an affidavit before an alderman that they had a right to be assessed. Mr. McDonald being American born, and not requiring naturalization papers, and would not satisfy them to take an affidavit before an alderman, he was not assessed; but a great many in the division knew that he was a regular citizen; I did myself. Joseph James O'Rourke and Thomas O'Rourke both reside in Second street between Thompson and Master, on the east side of Second, and are regular voters. Edwin F. Glacken resides in the same house, a brother-in-law to them. Patrick Kebler resided back of 1232 Mascher street, in the rear of Henry



Black's. Isaac Cohen and George Cohen, his son, reside at 143 Girard avenue. The father told me that he and his son were both bona fide voters. Thomas Landy resided in Hancock street at the time I canvassed this, back of the first house above Thompson street. George Washington Bornman resides on the west side of Mascher, between Thompson and Master. John Murphy resided in Hancock street below Thompson, on the west side. John Donnelly resided in Palethorpe street below Master, on the east side, and voted on age, which I believe is a bona fide voter. Dominick Murphy, jr., resides in Second street, between Thompson and Master, on the east side. John Cook resides in Palethorpe street, between Thompson and Master, on the east side. Henry Black resides in 1232 Mascher street, on the west side. Christian Steuben resided in Hancock below Master at the October election, and after for some time. A musician by profession, Adam Goodfletcher, (there is another name nearly the same as this,) lives in Hancock street, between Master and Thompson. Baker by profession, John Faber, he resided with his father-in-law, Mr. Wolf, in Hancock street, between Thompson and Master, on the east side, at the time of the October election and some time after. Walter Dewing resides in Palethorpe street with his mother, between Girard avenue and Thompson, east side.

Q. Were not all the persons you have mentioned residents in the fourth division of the Seventeenth ward at the time of the last October election, to the best of your knowledge and belief?—A. Yes, sir.

This reduces the claim, Appendix D, even if clearly made out as votes improperly allowed, to ten, in this division.

The minority, if time could be allowed, (which, by the by, has been refused, unaccountably, in this case,) would make a thorough and full examination of the testimony, so as to exhibit the exact result of the evidence taken; a cursory review of it makes it manifest that many of the votes called in question by Mr. Myers would be satisfactorily accounted for by Mr. Moffet. In the main it would appear, as we believe, favorable to Mr. Moffet. We are, however, forced to the review upon examination as shown in large proportions, and we can thus overturn the result violently reached by the majority.

Thus it will appear:

Moffet's returned majority .....	127
Review of tally papers entitles him to .....	5
Admitted frauds against him—single votes proved in each individual case .....	53
<hr/>	
Actual majority as above for Mr. Moffet .....	185
Deduct:	
Gain for Mr. Myers by re-examination of tally .....	35
Illegal votes agreed to by both parties .....	30
<hr/>	
	65
<hr/>	
Ascertained majority for Moffet .....	120
Taking an enlarged view, by throwing out (as it should be by fair dealing) the tenth division, Nineteenth ward, where the polls were taken possession of by an armed mob .....	173
<hr/>	
	293
<hr/>	

The minority, therefore, submit to the consideration and favorable action of the House the following resolution:

*Resolved*, That the evidence does not warrant the displacement of John Moffet from the seat now occupied by him in this House, and that he is entitled to the same, and ask that they be relieved from the further consideration of the subject.

SAML. J. RANDALL.  
A. G. BURR.



## GEORGIA ELECTION CASES.

Where members claimed under an ordinance of a State constitutional convention to hold seats, upon one set of certificates, and one election, in two Congresses, it was held that (no particular Congress being mentioned in the certificates) where the members elect took their seats in one Congress the force of their election was exhausted, nor could the State convention render valid a claim to sit in two Congresses, where there was a single election.

House adopted the report *nem. con.*

January 28, 1870.—Mr. Churchill, from the Committee of Elections, made the following report:

*The Committee of Elections, to which were referred the credentials of P. M. B. Young, Nelson Tift, W. P. Edwards, J. W. Clift, Samuel F. Gove, and C. H. Prince, claiming seats as representatives from the State of Georgia, submits the following:*

In November, 1867, under the reconstruction acts of Congress, members of a convention to form a constitution of the State of Georgia were elected. This convention convened on the 9th day of December, 1867, and proceeded with the only duty which, under those acts, they had to perform, and on the 11th of March, 1868, they adopted a constitution to be submitted to the people under the acts above referred to.

On the 11th of March, 1868, Congress passed an act, the second section of which reads as follows:

SEC. 2. *And be it further enacted,* That the constitutional convention of any of the States mentioned in the acts to which this is amendatory may provide that at the time of voting upon the ratification of the constitution, the registered voters may vote also for members of the House of Representatives of the United States, and for all elective officers provided for by the said constitution; and the same election officers who shall make the return of the votes cast on the ratification or rejection of the constitution shall enumerate and certify the votes cast for members of Congress.

Under the authority of this section, although anticipating its passage, the convention on the 10th of March, 1868, adopted an ordinance which provided that an election should be held, beginning on the 20th of April, 1868, "for voting on the ratification of the constitution, and for governor, members of the general assembly, representatives to the Congress of the United States, and all other officers to be elected as provided in the constitution." It was further provided "that the persons so elected shall enter upon the duties of the several offices to which they have been respectively elected, when authorized so to do by acts of Congress or by the order of the general commanding; and shall continue in office till the regular succession provided for after the year 1868, and until successors are elected and qualified; so that said officers shall each of them hold their offices as though they were elected on the Tuesday after the first Monday of November, 1868, or elected or appointed by the general assembly next thereafter."

General Mead was further requested by the same ordinance to cause due returns to be made, and certificates of election to be issued by the proper officers. Under this ordinance an election was held, beginning on the 20th April, 1868, at which representatives in Congress were voted for in the several congressional districts, each voter so voting depositing but a single ballot, on which was inscribed "for representative in Congress," with the name of the person for whom he voted. At this time there was no act of Congress in existence giving representation in Congress to Georgia, and therefore no time when, by the terms of the above ordinance, the terms of the persons so voted for could commence.



On the 25th of June, 1868, Congress passed a law which declared that Georgia should be entitled and admitted to representation in Congress when the legislature of the State should have duly ratified article fourteen of the amendments to the Constitution, and should also have given the assent of the State to certain fundamental conditions specified in the act; and the President was required, within ten days after the receipt of official intelligence of the fact, to issue a proclamation announcing the ratification by the legislature of the fourteenth amendment.

On the 1st of July, 1868, General Meade issued certificates of election to the several persons who had received a majority of votes for representative in Congress in their respective districts, which certificate, for the first congressional district, was in the following form :

HEADQUARTERS THIRD MILITARY DISTRICT,  
(GEORGIA, FLORIDA, AND ALABAMA.)

From the returns made to these headquarters by the boards of registration of the election held in the State of Georgia for civil officers of said State, and for members of Congress, under the provisions of General Order No. 40, issued from these headquarters, which election commenced on the 20th day of April and continued four days, *it is hereby certified* that it appears that in said election J. W. Clift received a majority of the votes cast for a representative to the Congress of the United States from the *first congressional district* in said State of Georgia.

GEORGE G. MEADE,  
Major General U. S. A., Commanding.

ATLANTA, GA., July 1, 1868.

The certificates were similar in form, with changes only of the name of the person certified to be elected.

The convention adjourned on the 11th March, 1868, the constitution providing that the general assembly should meet within ninety days of the adjournment of the convention, and annually thereafter on the second Wednesday in January, *or on such other day as the general assembly might provide*. This last fact is important, since it has been claimed before the committee that, under the constitution of Georgia, no election for members of Congress could be held until the year 1870. The clause of the constitution so referred to is as follows—article 2, section 11 :

The election of governor, members of Congress, and the general assembly, after the year 1868, shall commence on the Tuesday after the first Monday in November, *unless otherwise provided by law*.

But this puts no limitation whatever upon the powers of the general assembly to regulate the time and frequency of elections, and, taken in connection with the general grant of power to the general assembly (article 3, section 5, 1) to pass any law consistent with the constitution they might deem necessary to the welfare of the State, gave them full control of the subject, and the convention having required the general assembly to meet within ninety days of their own adjournment, and also on the second Wednesday of the following January, the fullest opportunity was given to the latter to provide by further legislation, if necessary, for the proper representation of the State in Congress.

On the 8th of July, 1868, the general assembly of Georgia organized, and soon after ratified the fourteenth amendment, and assented to the fundamental conditions mentioned in the amendatory reconstruction act of June 25, 1868; and the President thereupon, on the 27th day of July, 1868, issued his proclamation of the fact of such ratification. The members elect from Georgia thereupon, in July, 1868, presented their certificates of election received from General Meade, and, so far as eligible, were thereon admitted to seats in the fortieth Congress.

Afterward, in November, 1868, the governor of the State issued com-



missions to each of these parties, based upon the same election, a copy of which is as follows:

\*       \*       \*       \*       \*       \*       \*       \*

These commissions are now presented to the forty-first Congress, and the persons holding them claim that, by the election of April 20, 1868, and the ordinance of the convention under which that election was held, they have a right to seats in the forty-first Congress, although they have already by virtue of the same election taken and held seats in the fortieth Congress.

This commission, as evidence of an election under the ordinance in question, is unauthorized. The only person who was authorized by that ordinance to issue certificates of election was General Meade. That ordinance was adopted by the convention itself, prior to the adoption of the constitution of the State, and is the only law governing that election, and its force is preserved by the constitution itself, which provided (sec. 12 of art. 11) that the ordinances of the convention on the subject of this first election should have the force of laws, until they expired by their own limitation, and as the ordinance is unlimited in this respect it follows that the only valid certificate of election under that ordinance must come from General Meade.

But by comparing the commission issued by Governor Bullock with the certificate of election given by General Meade, it will be seen that they relate to the same election, the same officer, and the same office; that the commission of Governor Bullock is issued under his general power and duty to grant commissions to persons elected to office in the State; that it confers and attempts to confer no powers not already conferred by the certificate of General Meade; and that the rights of the claimants whose cases have been referred to the committee are the same as though the papers referred to the committee had been the certificates of General Meade and not the commissions of Governor Bullock. It is a case of duplicate credentials to the same individual, of which this committee has already had more than one example.

For the true interpretation of these papers we must look to the law of Congress and the ordinance of the convention of Georgia under which the election was held, and also to the action of the voters themselves, of the persons claiming to have been elected, and to the previous action of the House. We shall thus ascertain when the term of office of these parties commenced; for, that determined, the laws and Constitution of the United States will determine when it ended.

The act of March 11, 1868, authorized the voters of Georgia to vote for members of the House of Representatives, which was done on the 20th of April following, when these claimants were elected. On the 25th of June following Congress enacted that Georgia should be admitted to representation in Congress when certain conditions were complied with, and that the act should take effect upon such compliance. These conditions were complied with in July, 1868, and thereupon Georgia became at once entitled to representation in Congress, for which she had already chosen her representatives. In what Congress were they entitled to take their seats upon such compliance? Certainly not in the forty-first Congress, which would not come into existence for several months, and a seat in which could not answer this right of Georgia under their acts to immediate representation. It could only be the fortieth Congress, then in existence, then in session, in fact. To claim that a right of immediate representation upon the happening of a certain event, which was guaranteed by the law of June 25, 1868, could be satisfied with, or be interpreted as referring to, a right to a seat in a future Congress, when



a present Congress was in existence and legislating with respect to the people to whom this right was conditionally guaranteed, is absurd; to state the proposition is to answer it.

To the same effect is the ordinance itself, which recites in its preamble as reasons for its passage, "that all civil officers are only provisional until the State is represented in Congress," and that "the interest of Georgia requires that all civil offices should be filled by loyal citizens, according to the provisions of the constitution being framed by this convention, at the earliest practicable moment."

The object of the laws of Congress of March 11, June 25, 1868, as well as of the ordinance of the convention, was to provide for and secure immediate representation, and not future representation, which could be attended to by the legislature when the State had fully returned to civil rule. The object as well as the terms of both laws and ordinance require us to interpret them as providing only for the election of members of Congress who should be members of whatever Congress was in existence, when the right of representation in Congress was restored to Georgia. The action of the people of Georgia, voting at that election, seems conclusive on this point. In accordance with the law of Congress of February 28, 1868, and of the ordinance of their own convention, they voted for representatives in Congress, naming no Congress as that to which they were elected, but leaving that to be determined by events.

The action of the persons elected, as well as of the House, was in entire harmony with this view. Immediately upon the compliance of Georgia with the required conditions, their members presented themselves, and the House received them as representatives from that State.

It is too late for these claimants to deny that their election entitles them to sit in the fortieth Congress. Their own action has estopped them from such denial, and unless they can show themselves entitled by the election of April 20, 1868, to hold for two terms, the force of their election is exhausted.

The action of the people in voting for them as representatives in Congress, and their certificates of election as such representatives, have been fully answered by admitting them as such representatives to the fortieth Congress. Nor was it a matter of choice with these men whether they should present themselves for admission to the fortieth or to the forty-first Congress. By the ordinance of the convention under which this election was held, and the law of Congress of June 25, 1868, they were to enter upon the duties of their office whenever the State of Georgia had complied with the conditions mentioned in the last-mentioned act. These conditions were complied with during the following month of July, 1868, and therefore it became the duty of these men to enter upon the duties of the office to which they had been chosen. This they did, and became members of the House of Representatives of the fortieth Congress, and acted as such during the closing days of the second session of that Congress, and for the remainder of the term of its existence.

Having taken their seats as members of the fortieth Congress, it was not in the power of the convention of Georgia to extend their term so as to include the forty-first Congress. The office of representative to the fortieth Congress is entirely distinct from that of representative in the forty-first Congress, and made so by the Constitution of the United States.

It is not pretended that there was anything in the conduct of the election of April 20, 1868, or in the action of the voters, which indicated a purpose to choose for more than a single Congress, and the ordinance



of the convention cannot affect the result. Indeed, an examination of the ordinance will show that it was the State officers, and not members of Congress, the duration of whose offices was attempted to be regulated by that act.

The conclusion of the committee, therefore, is that the force of the election of April 20, 1868, was exhausted when these gentlemen were admitted members of the fortieth Congress, and they therefore recommend the adoption of the following resolution:

*Resolved*, That the claimants to seats in the forty-first Congress of the United States from the State of Georgia, under the election held in that State on the 20th day of April, 1868, are not entitled to such seats.

### JOHN COVODE vs. HENRY D. FOSTER.

Where the proceedings are so tarnished by fraudulent, negligent, or improper conduct as to render the returns unreliable, the entire poll may be thrown out.

Where the State registration law requires assessment for taxes as condition of voting and it was disregarded by the election officers, it was held that the poll shall be rejected.

Votes of poor-house inmates sent there from other townships, (and the assessment and payment of taxes in their case being illegal,) were rejected.

To gain a residence a person must actually join a community, laying aside his former residence.

The House sustained the report, (February 9, 1870;) yeas, 125; nays, 45.

January 27, 1870.—Mr. Churchill, from the Committee of Elections, submitted the following report:

*The Committee of Elections, to which was referred the contested election case from the twenty-first congressional district of Pennsylvania, to which John Covode and Henry D. Foster are the parties, submits the following:*

By the laws of the State of Pennsylvania it is made the duty of the governor, on the receipt by the secretary of the Commonwealth of the returns of the election of members of the House of Representatives of the United States, to declare, by proclamation, the names of the persons returned as elected in their respective districts. On the 17th of November, 1868, the governor issued his proclamation, giving the names of the persons so elected at the election held in that State on the 13th of the previous October, except in the twenty-first district of the State, composed of the counties of Indiana, Westmoreland, and Fayette; as to which district the proclamation stated that no such returns of the election had been received by the secretary of the Commonwealth as would, under the election laws of the State, authorize him to proclaim the name of any person as having been returned duly elected a member of the House of Representatives of the United States for that district. The Clerk of the House, following the proclamation of the governor, in making up the roll of members of the forty-first Congress, named no person as member elect from that district, and the whole question was held open for the action of the House of Representatives.

The Hon. John Covode and the Hon. Henry D. Foster presented themselves to the House, each claiming to have been duly elected to represent that district, and the whole matter was, on the second day of April, 1869, referred by the House to the Committee of Elections by the following resolution:

*Resolved*, That the contested election case from the twenty-first congressional district



of Pennsylvania be recommitted to the Committee of Elections with instructions to report upon the merits of the case, who is entitled to represent said district in this House, with authority to make regulations to govern the mode of conducting the contest and taking testimony.

The House afterward, on the 5th of April, 1869, adopted the following regulations for the conduct of the contest, under which the claimants proceeded to take testimony :

*" Regulations for conducting the contest and taking testimony in the contested election case from the twenty-first congressional district of Pennsylvania, to which John Covode and Henry D. Foster are the parties.*

" Each of the claimants shall serve upon the other a notice of the grounds on which he claims the seat, before June 1, 1869, and an answer to the notice of his opponent, before June 20, 1869.

" Said Covode shall take his testimony between the first and fifteenth days, inclusive, of July, August, and September, 1869, and said Foster shall take his testimony between the sixteenth and last days, inclusive, of the same months.

" The statutory provisions regulating ordinary cases of contest shall apply to this case so far as the same are consistent with these regulations.

" All testimony shall be transmitted, under seal, by the officers before whom the same shall be taken, to the Clerk of the House, at Washington, so as to be received by said Clerk before the 15th day of October, 1869, before which day the notices, answers, evidence, and exhibits in the case shall be filed with said Clerk ; and the clerk of the Committee of Elections shall immediately thereafter arrange the papers for the Public Printer, and cause the same to be printed before the 1st day of November, 1869.

" The printed arguments of the claimants shall be filed with the Committee of Election on the first day of the next session of Congress."

*Therefore resolved*, That the foregoing regulations of the Committee of Elections for conducting the contest and taking the testimony in the contested election case from the twenty-first congressional district of Pennsylvania be, and the same hereby are, adopted by this House.

Attest :

EDW. MCPHERSON, *Clerk.*

Each of the parties served upon the other notice of the grounds upon which he claimed the seat, in accordance with the above regulations, and each also served an answer denying the charges contained in the notice of the other, and thereafter each party took testimony in support of their several claims, which, with the printed arguments of the parties, have been submitted to the committee. The notices above referred to, together with the answers of the parties, from their great length are not inserted in this report, but will be found in the paper book at pages 7-16 and 278-292.

From the certificates of the return judges of the several counties composing this district, (which will be found in the paper book at pages 152 and 153, and which are accepted by both claimants as correctly stating the result of the returns from the several voting precincts in each county,) it appears that 13,807 votes were returned as cast for Henry D. Foster, and 13,766 for John Covode, showing upon the returns a majority for the former of 41 votes.

The evidence offered by the Hon. Henry D. Foster seems to establish that three persons, to wit: Edward McAlister, of Fairfield Township, Westmoreland County ; and Samuel Falkenstein, of German Township, and Daniel Delaney, of Bridgeport Borough, both of Fayette County, were legal voters, and that their votes were rejected by the several boards of election of those localities, and that they would, if permitted, have voted for Henry D. Foster for Congress.

It also seems to establish that twenty persons were improperly permitted to vote at that election, and who did vote for John Covode for



Congress, whose names, residences, and the reason why their votes should have been rejected, will appear from the following table :

Name.	Place of voting.	Illegality.	Evidence.
FAYETTE COUNTY.			
Martin Lutz.....	Uniontown Borough.....	Minor.....	98, 99, 328, 329, 330
Jacob Sanders.....	Connellsville.....	do.....	320
Griffith Wells.....	Fayette City.....	Non-resident.....	336
WESTMORELAND COUNTY.			
Andrew Rahl.....	North Huntingdon.....	Non-resident.....	104, 373, 415
Jacob Martz.....	Penn Borough.....	do.....	370, 383
J. M. Clements.....	Washington.....	Minor.....	377, 438
Aaron Jeffries.....	North Huntingdon.....	Non-resident.....	416
Bennett Van Kirk.....	Rostraver.....	do.....	421, 424, 433
Sparks Cooper.....	do.....	do.....	427
William Ray.....	do.....	Negro.....	432
William E. Snyder.....	Boliver.....	Voted twice.....	417, 444, 445
INDIANA COUNTY.			
John Mullen.....	Saltzburg.....	Minor.....	383
Henry H. Seger.....	North Mahoning.....	Non-paym't of tax.....	434, 446
John Winebark.....	do.....	Minor.....	434, 435
George R. Bohler.....	Center Township.....	Non-resident.....	437, 438
George W. Kephart.....	Cherry Hill.....	Minor.....	438, 439
Calvin Hall.....	Washington Township.....	do.....	440, 441
James McQuonn.....	North Mahoning.....	do.....	441
David Proctor.....	Greene.....	Negro.....	442, 443, 447
Adam Bowers.....	Brush Valley.....	Non-assessment.....	442

Adding the then first-mentioned votes to those returned for Henry D. Foster, and subtracting the twenty last mentioned from those returned for John Covode, will make the majority of the former sixty-four.

To overcome this majority it is claimed on the part of Mr. Covode—

1. That the entire poll of Dunbar Township, in Fayette County, should be excluded.

2. That the entire poll of Youngstown district, in Westmoreland County, should be excluded.

3. That a considerable number of paupers from the poor-houses of Westmoreland and Fayette Counties were improperly permitted to vote in the towns where those poor-houses are situated, and where it is claimed they had no residence; and that they voted for Mr. Foster.

4. That a large number of aliens, imported men, non-residents of the districts where they voted, and lunatics, were improperly permitted to vote, and did vote for Mr. Foster, and also that votes were improperly counted to him.

5. That votes offered by qualified voters for John Covode were improperly rejected.

These claims will be considered in the order in which they are stated.

1. While it is well established that mere neglect to perform directory requirements of the law, or performance in a mistaken manner, where there is no bad faith and no harm has accrued, will justify the rejection of an entire poll, it is equally well settled that where the proceedings are so tarnished by fraudulent, or negligent, or improper conduct on the part of the officers, as that the result of the election is rendered unreliable, the entire returns will be rejected, and the parties left to make such proof as they may of votes legally cast for them.

In *Mann vs. Cassidy*, 1 Brewster Penn. R., 60, Thompson, P. J., says:

When the conduct of the election officers is such as to destroy the integrity of their returns, and to avoid the *prima facie* character which they ought to bear as evidence, due and adequate proof must be demanded of each vote relied on. This rule may operate severely upon an innocent candidate; but not his rights alone, but those of the whole



people, are jeopardized by falsehoods or irregularities of a "flagrant character," when we look in vain for that good faith and integrity whose presence is potent to save from undesigned slips or even grave omissions.

The same doctrine was afterward affirmed by the same court in the case of *Thompson vs. Ewing*, 1 Brewster, 67; by the court of common pleas of Philadelphia, in the case of *Weaver vs. Given*, 1 Brewster, 140; by the committee of the legislature of Pennsylvania, in the case of *Thayer vs. Greenbank*, 1 Brewster, 189; by the present House of Representatives and the present Committee of Elections, in the case of *Myers vs. Moffett*, in which the committee, in their report, say that "in such cases not only State courts but legislatures and Congress have not hesitated to declare the whole poll void and of no effect, except as to such votes as either party chooses to save, by proof of their legality." 1 Brewster, 249. The whole ground has been still more recently carefully reviewed, and this doctrine sustained by the court of common pleas of Philadelphia, in the contested election cases growing out of the election for city officers in Philadelphia, in 1868.

In the election at Dunbar Township, the judge and one inspector—a majority of the board—were democratic. One inspector was a republican. Some difficulty occurred in finding the ballot-boxes, which had been deposited, it would seem, at an unusual place after the preceding spring election, and the election was opened about 9 o'clock in the morning by using a hat and cigar-box in which to receive the votes, in the absence and without the assent of the republican inspector, (page 26.) The box and hat were open, and placed upon the window-sill, or a shelf by the window through which the votes were received, and persons other than members of the board were permitted in the room where the votes were received, and were near the boxes, and were passing in and out at pleasure during the day, (18, 21, 29, 109.) There was great noise and confusion in the room, (18.) Whisky was kept in the room and near the ballot-boxes, and freely drank by all the members of the board, and by the democratic club, and also by other parties who came into the room, (18, 19, 20, 109.) Persons under the influence of liquor came in from the outside, (297.) A bottle of whisky fell from the pocket of one of the inspectors of election, and was broken, and a contribution taken up among the officers of the election and another purchased, (18, 20.) A scuffle for the possession of one bottle of whisky took place in the room where votes were received, and within a few feet of the boxes, participated in by a number of persons, (21.) The amount of liquor had there, one witness says, was about half a gallon, (109.) The democratic inspector, McCullough, who received the votes at the window the greater part of the time during the day, (26,) and whose vigilance while so receiving them was the principal protection against interference with the ballots which had been voted, especially during the first two hours in which votes continued to be received in the hat and cigar-box, became very much excited with liquor, was rude and boisterous, cursing and swearing, shouting to persons outside of the window, and thrusting his head and arm out of the window, and shouting for the democratic candidates, (18, 20, 109.) While so situated, he would seem to have been equally unfitted, by his position and his condition, from exercising proper care over the contents of the boxes, especially from persons on the inside, where democratic tickets, other than those which had been voted, were deposited, and were issued to persons inside of the room, (21.) More than one witness present testifies that ballots could have been put in or taken out of the hat and cigar-box while being used to receive votes at that election, (21, 110.)



Challenges were disregarded. J. H. Beyers, Martin B. Pope, William J. Martin, Thomas P. Walker, and others, testify that they challenged different persons offering to vote, and their challenges were disregarded, and in some instances laughed at by the democratic inspector receiving the votes; and the votes were received, notwithstanding the challenge, and without the parties being sworn. In some cases, where objection was made on the ground of alienage, and papers were presented by the voter, the vote was received without the papers being opened and without any examination by the inspector to ascertain either their character or their genuineness, (20, 21, 25, 27, 28, 109.)

One Kelly, when challenged, presented a bottle of whisky, saying that was his papers. He afterwards was brought again to the polls and presented pretended naturalization papers, and his vote was received, (20, 109.) He was examined, during this investigation, and swore that he was upon a drunken spree at the time of this election, and had no knowledge or recollection whatever of having been present at that election; and further, that he had never been naturalized, and had never had any naturalization papers, (52.) Others voted upon papers shown to have been fraudulent, which was greatly facilitated by the slight examination or entire neglect of examination of papers, which seems to have characterized the conduct of the board.

While the voting in the hat and cigar-box was yet going on, one William McDowell marched a company of thirty or forty persons from Irish Town, mostly strangers, in military order, to the polls, where they occupied the space in front of the window where votes were received, and held it until the company had voted, and in such a manner that it was very difficult to challenge them; they were, however, frequently challenged, but these challenges were disregarded, and no attention paid to them, (26, 28, 109.) In this company were quite a number of persons who had been imported from Pittsburg, on Saturday, the 3d day of October, the last day on which they could be assessed to vote at that election, and who had been assessed improperly by Moses Porter, the assessor of the township, from a list furnished him by John R. Smith and William Speers, who had been concerned in their importation, without their personal application to him, and without his ever having seen them, and, if Smith is to be believed, after his time to make assessments for the October election had expired, (31, 34, 74, 83, 298.) The presence of these imported voters in the township was known to the friends of Mr. Covode, but their purpose to prevent the success of the scheme was prevented by the manner of their voting, and the disregard of challenges by the board, (76.)

From what has been said, it will not be surprising to learn, what is in evidence in the case, that no democratic vote was rejected by the board that day, (110.)

A little after eleven, and after about one hundred and fifty votes had been polled, the regular ballot-boxes were obtained, and the votes were transferred to them from the hat and cigar-box by the democratic inspector, (20.)

When the votes were being counted in the evening, the democratic clerk was taken sick, and William Speers was asked to take his place, and without being sworn first as clerk, until the close of the count, (25.)

On counting, six ballots were found in the boxes more than the names of persons having voted on the tally-lists of the clerk, which agreed, and only one person is shown to have voted whose name is not on the list, (18, 300, 301.)

The use of the hat and cigar-box, the transfer of the ballots from them



to the regular boxes when received, and the permitting Speers to act as clerk without being sworn, were contrary to the provisions of the election laws of Pennsylvania, (Election Laws, §§ 22, 29, and 38.)

To allow persons other than officers of the election to enter the room in which they were performing their duties is held, in *Thompson vs. Ewing*, 1 Brewster Rep., 110, to be decidedly improper; while the not requiring proof of naturalization, and refusing to investigate challenges, or to conduct the election in such a manner as to prevent challenges being made and passed on, are declared by Allison, P. J., in giving the judgment of the court in the contested election cases of 1857, (1 Brewster, 174,) to be not violative of directory requirements merely, but particulars which are absolutely essential to a due election.

From all the evidence, I think we must conclude that the returns of such an election are too unreliable to be received, and as neither party has attempted to prove what votes were cast for him at that election, that the whole poll of Dunbar Township must be rejected.

2. The consideration of the case of the Youngstown district, of Unity Township, Westmoreland County, makes it necessary that we should refer to the duties of assessors under the laws of Pennsylvania, in preparing lists of persons entitled to vote at elections in that State. By those laws, it is made the duty of the county commissioners, on or before the 1st day of August in each year, to cause to be delivered to the assessors of each ward, township, borough, or district, in their counties, a certified list, alphabetically arranged, of all the taxable persons returned at the last county assessment, copies of which list it is the duty of the assessor, on or before the 20th day of August in each year, to make and put up in at least two public places of the district, one of which must be the place of holding general elections. It is the further duty of the assessor to keep a copy of this list in his own possession, subject at all reasonable times to inspection without charge, and also, "at any such time ten days before the second Tuesday of October in each year, *upon the personal application of any person, i. e., white freeman, as aforesaid, claiming to be assessed within their proper ward, township, or district, or claiming a right to vote therein, as being between the age of twenty-one and twenty-two years, and having resided in the State one year, to enter the names of such persons upon the said list in their possession.*"

The assessors are further required to make out duplicate copies of these lists—that is, of the original list certified to them from the county commissioners, with the additions made by themselves—and, at least eight days before the second Tuesday of October in each year, to certify, sign, and deliver one of these duplicates to the county commissioners, who shall file the same in their office, and the other duplicate the assessors are required "*to hold and to hand over, without alteration or addition, to one of the inspectors of election of their proper election district, on or before eight of the clock in the morning of the second Tuesday of October, in each year.*" That the additions to the list to be made by the assessors are to be only of such as personally applied to be assessed, appears not only from the plain language of the law, as above quoted, but also from the fact that the next section provides that the assessor shall, on writing the names of the persons *claiming* to be assessed, *forthwith* levy and assess on such persons, unless between the age of twenty-one and twenty-two years, such an amount of county tax as by law is levied and assessed on taxable inhabitants of like standing and occupation, and give a certificate of such assessment *to the person so assessed*, which certificate is the authority to the collector to receive



the tax, and to give a receipt therefor. The assessor is further required to attend at the place of holding each general, special, and township election, during the whole time said election is kept open, for the purpose of giving, when called upon, to the inspectors and judge, any information he may possess in relation to the right of any person assessed by them to vote at such election, except that when the township is divided into more than one election district, he must attend in the district of his residence. (Election Laws of Pa., pages 23-25, secs. 11-16.) Unless assessed as above, no person has a right to vote in Pennsylvania, unless upon his own oath to his qualifications, and that of at least one other person, that he has resided ten days in the district. (*Id.*, p. 33, sec. 42.)

These laws make a complete and excellent system of registration. In the early part of the year, when no political excitement is likely to be prevalent, and for purposes of taxation alone, a list of all the taxable persons in each township is prepared or corrected by the assessor, and filed with the county commissioners. As the time for election approaches, a copy of this list, alphabetically arranged, is sent to the assessors, copies of which must be by them, at least as early as the 20th of August, conspicuously posted in each district, and one kept by themselves also for public inspection; and upon the personal application of any person, they are to enter his name upon the list, and assess him as above stated. This personal application enables the assessor to identify the person making such claim, to inquire into its justice, and prepares him to give reliable information on the day of election to the inspectors and judge, as to whether the person presenting himself is the same person who was by him assessed, and other matters pertinent and important to be inquired into. A fraudulent claimant would hesitate to present himself personally to the assessor to make his fraudulent claim for assessment, or to the election board, when his claims would be likely to be exposed on his being confronted with the assessor. At the same time, the list placed in the hands of the commissioner at least eight days before the election, and to which he can make no additions under severe penalties, (Election Laws, 40, sec. 75,) makes it impossible for the assessor to add any names to the list remaining in his possession, after its completion ten days before the election, without the certainty of detection should inquiry be made and the lists compared.

The township of Unity is divided into three election districts, of which Youngstown is one, in which district Lewis Eisaman, the assessor of the town, did not reside. From his own testimony (pages 216-218) it appears that he made about one hundred and twenty-five additional assessments in the township in 1868, of which at least thirty-nine were made in Youngstown district, although, from the testimony of Jesse Chambers, (201,) it would seem that at least fifty additional assessments were made in Youngstown. Of the thirty-nine additional assessments testified to by himself, to wit, thirty at the monastery of St. Vincent and nine at the convent near by, twenty-eight certainly of those assessed from the monastery—and probably the whole number, and a part also of those from the convent—were assessed without any personal application, and without any knowledge on his part of the persons so assessed, or inquiry as to their right to be assessed or to vote. That he understood that the law required a personal application to him before such additional assessment could be made by him appears from the fact, as testified to by John Stevenson, (107,) and not contradicted, that he refused to assess two crippled soldiers without their personal appearance, saying that he could not assess them unless they appeared personally.



The testimony of this assessor further shows that he did not deliver to the county commissioners a certified, or any, copy of the assessment list, including these additional assessments made by him, eight days before the second Tuesday of October, as required by law, nor at all until after the election. It further appears that he did not furnish or hand over to the inspectors of election in Youngstown district any copy of this list on the morning of the day of election or at any other time.

It would seem from the testimony of Eisaman, and also of Joseph C. West, (356,) that more than ten days before the election the former put up in the tavern of the latter, at which general elections were held in that district, a paper purporting to be a list of additional assessments; and, some of the names being found to be spelled wrong, he afterwards gave West a correct copy. This list, however, was more than ten days before the election, for West swears that the last name was put on it by the assessor on the evening of the eleventh day before the election. This paper, together with a copy of the original list from the county commissioners, which had been posted at this tavern more than thirty days before the election, was taken from the bar-room wall on the morning of the day of election by West and McAtee and taken into the election room, and, as appears from the testimony of members of the board, was used during the day as the legal assessment list of the district, and was the only list in the hands of the board that day.

Strangely enough, this list, which, if a legal paper, should by law have been preserved to be used at the November election, (Election Laws, p. 35, sec. 51,) disappears with the close of the election and has never been seen since. (348;) and, equally strangely, after the election was over and his authority in the matter was at an end, this assessor was again at the monastery, as appears from the testimony of its abbot, (218,) to obtain anew the list of additional assessments, and at the November election the board was in possession of a list which must have been prepared after the October election and without authority of law. The contents of this paper used at the October election as a list of additional assessments nowhere appears; but it does appear that it was complained of as not being full, (347.)

To recapitulate: The assessor assessed persons who made no personal application to him, contrary to the law; the names of the persons so assessed he did not enter upon the list in his possession, as required by law, but upon a separate piece of paper, which was not a legal assessment; nor did he furnish any copy of this to the county commissioners at any time before the election, nor to the inspectors of elections on or before 8 o'clock on the forenoon of the day of election, as required by law. All these provisions of law are not directory merely, but mandatory, and enforced by severe penalties. (Election Laws, p. 42, sec. 85.)

But whether the assessment made by Eisaman was a legal assessment or not, (and we think no legal assessment was shown to have been made,) the failure of Eisaman to furnish to the inspectors a copy of the list had the same effect, so far as that election was concerned, as though no assessment whatever had been made.

The law of Pennsylvania is explicit that when the name of the person coming to vote is not found on the list furnished by the commissioners or assessors the board *must* examine him under oath as to his qualifications, and he must prove by at least one witness, who must be a qualified elector, that he has resided in the district at least ten days next immediately preceding the election. (Election Laws, 33, sec. 42, 2 par., 553, 580-1.) That law further provides that if any inspector or judge



shall receive the name of any person whose name shall not be returned *on the list furnished by the commissioners or assessor*, without first requiring the evidence directed by the act, the person offending shall, on conviction, be fined not less than fifty nor more than two hundred dollars. (Election Laws, 41, sec. 81.)

The assessor having failed to furnish the inspectors with any copy of the list of taxables, the board could legally receive no vote at that election, except by requiring him to be examined as to his qualifications under oath, and to furnish the further evidence required by the act. Nothing of this kind was done, but, instead, the votes of persons were rejected because their names were not found on this paper taken from the tavern wall, and they were permitted to vote because their names were found thereon. This alone we think sufficient to invalidate the election in that district.

But the conduct of the election board was equally blameworthy with that of the assessor. From the report which had gone out that an unusually large number had been assessed at the monastery, and from the gathering of strangers there, it was believed that improper votes would be attempted to be polled, and a purpose seems to have been formed to prevent these votes being received, except upon proper examination. But from the commencement of the election until about eleven o'clock, during which time the greater part of these votes were polled, challenges were entirely disregarded.

Jesse Chambers swears (202) that he challenged a number of persons from the monastery in the forenoon, whom he thought not qualified, and that no attention was paid to his challenge, and that he was told by one of the inspectors of the election to mind his own business—that they were attending to that concern. Shannon Nicely (209) swears that he saw eight or ten challenged, none of whom were sworn, and all of whom were permitted to vote; that one person from the convent, when challenged, took some papers from his pocket and held them on the window-sill with one hand and his ticket in the other, and that the inspector took his ticket without any examination of his papers. John Stouffer testifies (235) that he challenged one man at the request of Jesse Chambers, a stranger whom he had seen arrive at the monastery the evening before, carpet-bag in hand, (202,) but he was allowed to vote without any questioning at all. He challenged soon after two men as not being residents of the district, and was ordered by the inspectors away from the window, they saying that they were going to let people vote there that day as they pleased. He further testifies that he saw from fifty to sixty challenged during the day, most of whom were of foreign birth, but who were allowed to vote without showing any papers; that, in the forenoon, on holding up a bundle of papers in an envelope they were allowed to vote, and that when the challenge was on the ground of non-residence no evidence at all was required.

A. A. Johnson (264) and D. L. Chambers (116) also testify that challenges were made and entirely disregarded by the board.

No democrat appears to have been rejected by the board that day, while nearly all the above witnesses testify to the unfair and partial discrimination of the board against their political opponents.

From this use of a paper as an assessment list which had no claim to such authority, and the mysterious disappearance of which makes it impossible now to determine its character or value; the partiality of a board which, because all democratic, against the spirit of the law of Pennsylvania, should have been the more careful of the rights of the opposition; and the disregard of challenges, which, with the singular



disregard of his duties shown by the assessor, was the only safeguard of the purity of that election—we conclude that the entire poll of that election district should be rejected. As the majority of Henry D. Foster at Dunbar Township was one hundred and ninety-eight, and at the Youngstown district one hundred and seventy, the rejection of either of these districts will give a considerable majority to John Covode.

3. The testimony of John J. Morris (64) shows that he was steward of the Fayette County poor-house, in South Union Township, in 1868, and that of the inmates of that poor-house, Robert Rose, William Chopson, Robert McCarnes, John Dinsmore, Isaiah Cummings, and Edward Stewart, who were sent to the poor-house from other townships than South Union, voted in South Union, at the October election, 1868, and for Henry D. Foster.

The testimony of Harrison Wilson (189) also shows that he was steward of the Westmoreland County poor-house in Hempfield in 1868, and that George Haney, Henry Stoll, James Cook, Henry Sullenberger, James Johnston, Edward Laghey, Peter Patton, Alexander Cummings, and Dickson Stewart, who were sent to the poor-house from other townships, voted at that election in Hempfield, and, with other testimony, that they voted the democratic ticket and for Mr. Foster.

The testimony further shows (Zundell, 191) that none of these persons were assessed upon personal application, and also that none of them paid the tax upon which they were permitted to vote, (192, 273,) but that their names were handed to the assessor and their taxes paid by an official who understood that they would vote, and for the purpose of enabling them to vote a particular ticket; both assessment and payment of tax being illegal as against the express letter of the election laws of Pennsylvania. (Election Laws, 24, sec. 13; 40, sec. 75.) But did these persons acquire a residence in the election district where the county-house was situated, within the meaning of the law of Pennsylvania, which requires that the voter shall have resided at least ten days immediately preceding the election in the district where he offers to vote? We think not. Their residence at this place was not their own voluntary act, but the act of the public authorities, who, for reasons of economy and convenience, sent them here that they might be supported at the public expense.

The court, in *Murray vs. McCarty*, 2 Mun., 397, says, that to divest a person of the character of citizen of a particular place, “there must be a removal with an intention to lay aside that character, and he must actually join himself to some other community.” The italics are those of the original report.

So Burrill (Law Dic., tit. Residence) defines residence as “the place which one *has made* his seat, abode, or dwelling.” The derivation, as well as the ordinary acceptation of the term, denotes the place where the party *has seated himself*, and his own choice or free will in the matter is assumed. We think this the legal as well as the ordinary meaning of the term, and that accordingly the soldier who occupies a place at the command of his military superiors, the criminal who does the same thing while in custody in the hands of the criminal authorities, and the pauper who is placed and supported in the county poor-house at the public expense, gains no residence in the town by his enforced stay. We think, therefore, that these fifteen votes should be deducted from the vote for Mr. Foster.

4. There are also a large number of votes cast for Mr. Foster in different parts of the district, the legality of which has been attacked in the evidence, on the grounds of alienage, lunacy, non-residence, minority,



and non-payment of tax. As to lunacy, it was held by the court in *Thompson vs. Ewing*, 1 Brewster Rep., 104, that it was proper to show in a contested-election case that a voter was *non compos mentis*, and that without a finding in lunacy. The following is a list of those votes the illegality of which, for one or other of the above reasons, seems to have been established:

Name.	Place of voting.	Ground of illegality.	Evidence.
James T. Martin	Dunbar	Minor	27, 301, 310
Patrick Cooley	do	Alien	25, 26, 27, 28
Michael Cooley	do	do	25, 26, 27, 28
Andrew Wash	do	Non-resident and illegal assessment.	29, 31, 39, 40-1, 302, 304
Henry Shepherd	do	do	29, 30, 55
James Maynadier	do	do	33, 34, 78, 79, 80-83, 61, 62
John White	do	do	33, 34, 80-83, 61, 62
Calvin Halfpenny	do	do	33, 34, 80-83, 75, 61
John Wilson	do	do	33, 34, 80, 83
John Cummings	do	do	33, 34, 80, 83, 174
James Cummings	do	do	33, 34, 35
George T. Dawson	Brownsville	Non-resident	40, 41, 43, 319
Connolly Walcott	Payette City	Minor	44
Reason Dean	Menallen Towns'p	do	47, 51, 326
John Draynill	Dunbar	Alien	25, 52, 63
Michael Kelley	do	do	20, 21, 24, 25, 52, 53, 88, 109
Alfred Laughhey	Connellsville	Minor	55, 67, 68
John Turner	do	Alien	55, 56, Laws of Pa. 32
Robert Thompson	Unionborough	Not six months returned to State	57, 58
George Coleman	Luzerne	do	89
Peter Small	Perry	Lunatic	92
— Branthaven	do	Non-resident	93
Samuel Ogle	Wharton	Minor	95
Charles Lewis	Springhill	do	96-97
John Roble	do	Alien	97
W. S. Johnson	Uniontown	Minor	59-97
Uriah Yanger	North Union	Non-resident	85, 97-8
John S. Ryan	Unionborough	do	98
William Searight	do	do	98
James Searight	do	do	98
Israel Painter	South Huntingdon	do	102
Jacob Glunt	Franklin	do	104-6
Samuel Patterson	do	do	104-6
Patrick Lynch	Dunbar	Alien, and challenged, and not sworn.	21, 25, 109
John Lyons	do	do	24, 25, 109, 111
George W. Kolley	Salem	Alien	113
Joseph Saleigh	Penn Township	Lunatic	118, 165, 274
Jacob Weitzel	Alleghany	Non-payment of tax.	120, 135
Daniel Aubeny	Dongal	Non-resident	123, 124
David Forsyth	East Huntingdon	Minor	171
Daniel Bowers	North Huntingdon	do	171, 185, 186
John Steirs	Greensburg	Non-resident	172
C. M. Robinson	North Huntingdon	do	175, 179, 180
John P. Kunkle	do	do	175, 178-9, 180
Henry Lenhart	do	Lunatic	166, 175, 176, 178-181
Isaac Robinson	do	do	166, 175, 176, 178-181
Daniel Bradley	do	Alien and fraudulent papers	180-182
John McIntyre	do	do	180-182
Josiah Plant	do	do	180-182
Charles Penrose	Youngstown	Non-resident	200
John Brier	Mount Pleasant	do	221
Leon'd Sullenberger	do	do	222
Lewis Simpson	Sewickly	Negro	229, 234
John Potter	do	Non-resident	229
Vincent Nichols	do	do	230
James Diamond	Youngstown	do	239
Francis Cuslo	Alleghany	Non-payment of tax	242, 243
Johnson Spreul	do	do	242, 243
— Sweeny	do	Alien	243
Thomas McGurty	Derry	Not six months in the State	258-9
James S. Hassinger	Fairfield	Non-resident	259, 260
George Wilhour	Ligonier	Minor	262-4
Jonas Reinger	St. Clair	Non-resident	266
Frank Heiser	Rayne	Alien	270
Peter Adams	Unity	Minor	272-3
Charles Wilson	Rostram	do	275
Leander Corbett	do	do	275
George R. Chalfant	Uniontown	Non-resident	57, 58, 323
George Long	Rostram	Alien and non-resident	172, 274, 426
Edward Devlin	do	do	172, 274, 426
William F. James	Sewickly	Non-resident and imported voter.	231, 276, 234, 122, 127
John Boyle	do	do	231, 276, 234, 122, 127
Walter McMichael	do	do	231, 276, 234, 122, 127
Patrick Haskins	do	do	231, 276, 234, 122, 127
David Robinson	do	do	231, 276, 234, 122, 127



To these should be added one vote for Foster for Congress found in the State box in Sewickly Township and counted to him, although thereby the number of votes for Congress was made one greater than the number of names on the list, (377.)

Also, one vote for Foster in the South Huntingdon Township, found upon the floor at the close of the counting, a considerable crowd standing around, and counted to Foster, although thereby the number of votes for Congress was made one more than the number of names on the list of voters. These votes, amounting altogether to 77, we conclude should be deducted from the vote for Henry D. Foster, for the reasons above assigned.

5. The evidence also shows that John Hardy, of Dunbar, (28, 30, 72, 73,) Samuel C. Meyers, of Penn Township, (183, 186,) Daniel Byers, of Hempfield, (187-189,) and John M. Martin and Andrew B. Ousler, of Latrobe, (226, 227, 227-9, 282,) and Samuel Keller, of South Huntingdon, (102, 184,) qualified voters in those townships, offered to vote for John Covode for Congress, and that their votes were improperly rejected, or, in the case of Samuel Keller, prevented, by threats of violence made in the presence of the board, and against which it was their duty to protect him, and which they did not do.

The result of our examination and conclusions is as follows:

The certificates of the return judges show 13,807 votes cast for Henry D. Foster, and 13,766 for John Covode, giving the former a majority of 41 votes.

Adding to the former the three votes offered for Henry D. Foster and improperly rejected, and to the latter the six votes offered for John Covode and improperly rejected, and the majority for Henry D. Foster would be 38.

The vote at Dunbar Township, for member of Congress, at the October election, 1868, was, (136)—for Henry D. Foster, 375 votes; for John Covode, 177 votes.

The vote at Youngstown district, at the same election, was, (145)—for Henry D. Foster, 280 votes; for John Covode, 110 votes.

Subtracting from the vote for John Covode the 20 votes shown to have been improperly cast for him, would make the majority of Henry D. Foster 58.

But if the vote of Dunbar Township alone is rejected, Mr. Covode is elected by a majority of 140 votes.

If the vote of Youngstown district alone is rejected, he is elected by a majority of 112 votes.

If neither is rejected, but the pauper and other votes referred to under divisions three and four are rejected, he is elected by a majority of 34 votes.

If the pauper votes are not excluded, but only the votes under division four, he is elected by a majority of 19 votes.

If all these votes are rejected, as the committee think they should be, then John Covode is elected by a majority of 402 votes.

We therefore recommend to the House the adoption of the following resolutions:

*Resolved*, That Henry D. Foster is not entitled to a seat in this House as representative from the twenty-first congressional district of Pennsylvania.

*Resolved*, That John Covode was duly elected representative in Congress from the twenty-first congressional district of Pennsylvania at the election held therein on the 13th day of October, 1868, and that he is entitled to a seat in this House as such representative.



## MINORITY REPORT.

Mr. Randall, from the Committee of Elections, submitted the following as the views of the minority.

Mr. Randall, on behalf of himself and Messrs. Burr and Dox, from the Committee of Elections, presented the following as the views of the minority of the said committee in the above case:

The undersigned, a minority of the Committee of Elections, have not been able to concur with the majority of said committee in their conclusions and recommendations in the contested claim for a seat in this House by Messrs. Henry D. Foster and John Covode, from the twenty-first congressional district of Pennsylvania.

The reasons for such dissent are hereinafter given.

The majority, in their report, have taken occasion to give a full history of the *prima facie* case, which was determined and deposed of by the House of Representatives on the 2d day of April, 1869. As such *prima facie* title to a seat is not now under review, it is not deemed necessary to follow such statement as to said right, except to recognize the fact that the argument of the majority concedes that the *prima facie* right to the seat was vested in Henry D. Foster.

The Committee of Elections was, by resolution of the House, passed April 2, 1869, directed to inquire into the merits of this case, and determine who is entitled to represent the said twenty-first district in this House. The resolution is in the following terms:

*Resolved*, That the contested election case from the twenty-first congressional district of Pennsylvania be recommitting to the Committee of Elections with instructions to report upon the merits of the case, who is entitled to represent said district in this House, with authority to make regulations to govern the mode of conducting the contest and taking testimony.

The House afterward, on the 5th of April, 1869, adopted the following regulations for the conduct of the contest, under which the claimants proceeded to take testimony:

*Regulations for conducting the contest and taking testimony in the contested election case from the twenty-first congressional district of Pennsylvania, to which John Covode and Henry D. Foster are the parties.*

Each of the claimants shall serve upon the other a notice of the grounds on which he claims the seat before June 1, 1869, and an answer to the notice of his opponent before June 20, 1869.

Said Covode shall take his testimony between the first and fifteenth days, inclusive, of July, August, and September, 1869, and said Foster shall take his testimony between the sixteenth and last days, inclusive, of the same months.

The statutory provisions regulating ordinary cases of contest shall apply to this case so far as the same are consistent with these regulations.

All testimony shall be transmitted, under seal, by the officers before whom the same shall be taken, to the Clerk of the House, at Washington, so as to be received by said Clerk before the 15th day of October, 1869, before which day the notices, answers, evidence, and exhibits in the case shall be filed with said Clerk; and the clerk of the Committee of Elections shall immediately thereafter arrange the papers for the Public Printer, and cause the same to be printed before the 1st day of November, 1869.

The printed arguments of the claimants shall be filed with the Committee of Elections on the first day of the next session of Congress.

*Therefore resolved*, That the foregoing regulations of the Committee of Elections for conducting the contest and taking the testimony in the contested election case from the twenty-first congressional district of Pennsylvania be, and the same hereby are, adopted by this House.

Attest:

EDW. MCPHERSON, Clerk.

The testimony taken is voluminous, and full upon most of the points in controversy.



The twenty-first congressional district of Pennsylvania is composed of the counties of Westmoreland, Fayette, and Indiana. By the returns of the election held for member of Congress, in October, 1868, in said district and State, the following result is shown—both parties to this contest agree as to the correctness of said return by the return judges of said district, or a majority of them.

	Votes.
Henry D. Foster had, in Westmoreland County, (see Exhibits, pages 145 and 152) .....	6, 722
Henry D. Foster had, in Fayette County, (see Exhibit Q, page 153).....	4, 706
Henry D. Foster had, in Indiana County, (see Exhibit O, page 152).....	2, 379
Making a total of, (see Exhibit W, page 162). ....	13, 807
And that—	
John Covode had, in Westmoreland County .....	5, 192
John Covode had, in Fayette County .....	3, 819
John Covode had, in Indiana County .....	4, 755
Making a total of .....	13, 766
Thus giving Mr. Foster a majority of .....	41

We enter now upon an examination of the testimony and the argument of the majority thereon; and, in doing so, will follow as closely as is possible the order as laid down in their report.

First. Mr. Covode asks that the entire poll of Dunbar Township, in the county of Fayette, be excluded, upon the alleged grounds of irregularities by the election officers, and the admission by them of illegal votes cast for Mr. Foster at said poll.

The majority state in substance, in their report, that where election officers neglect to perform directory requirements of the law, or perform them in a mistaken manner, provided there is no bad faith on their part, and no harm accrues, that such neglect or mistake does not warrant the exclusion of an entire poll, unless the fraud is to an extent to make the poll unreliable; and that in such case the parties should be "left to make such proof as they may of votes legally cast for them."

We do not concur in this conclusion, believing that in such case it should be made the duty of each party to a contest, respectively, to prove the illegal votes cast at such poll, and for whom such illegal votes were given. Those not proved to be illegal should stand: that is to say, that such poll be purged of its illegal votes only; those left to be duly counted. The merits of a contested election depend upon the finding out which of the candidates received the greatest number of *legal* votes. The only way to arrive at this is to show of the votes cast for each candidate those that were *illegal*. It is at no time justifiable to throw out an entire poll, and in this way disfranchise the whole voting population of a district, if it can be purged of its illegal portion. In this case the testimony is full as to Dunbar Township, and the *illegal* votes, by said testimony, can be readily and conclusively determined. This is a Pennsylvania case, and the courts of that State have, in all contested elections, held that *impossibility* of ascertaining the true state of the poll is the only ground for rejecting it. To show that the majority them-



selves are in doubt as to the justness of rejecting this entire poll, they present to the consideration of the House the condition of the poll after they have purged it of all the *illegal* votes alleged and proved to have been cast. This latter course should commend itself to your judgment, and while being in strict accordance with law and precedent, is, at the same time, a protection to the honest voters in every poll.

In this view we are not without many safe precedents. The following are some of the citations from the rulings which govern such cases in Pennsylvania, and many authorities in contested elections in the Congress of the United States.

In *Skerrett's case*, (2 Parsons, p. 509,) it was decided that "for mere irregularities and want of conformity to the provisions of the election law that are merely directory, the court, for that reason, will not set aside the election."

In *Mann vs. Cassidy*, (Brewster's Reports, p. 32:) "The entire vote of a precinct should not be rejected where it is possible to ascertain the fraudulent votes."

In *Thompson vs. Ewing*, (same reports, p. 107:) "Mere neglect to perform directory requirements of the election law, or the performance in a mistaken manner, where there is no bad faith, and no harm has accrued, ought not to defeat the will of the people of an entire district."

In *Weaver vs. Given*, (same reports, pp. 144, 145:) "Careless, ignorant, and even willful neglect of the directory requirements of the election law cannot operate to nullify an election."

The following are some of the congressional decisions bearing upon the same point:

In *Goggen vs. Gilmer*, (Contested Election Cases in Congress, 1834 to 1865, p. 70, twenty-eighth Congress, first session:) "The acts of proper officers, acting within the sphere of their duties, must be presumed to be correct, unless shown to be otherwise."

In *Littell vs. Robbins*, (same, p. 138, thirty-first Congress, first session:) "The legal presumption is always against the existence of fraud. Nothing but the most unequivocal evidence can destroy the credit of official returns." The report in this case was made by the Hon. William Strong, of Pennsylvania, late of the supreme court of that State, and a gentleman likely to be named by President Grant as an associate judge of the Supreme Court of the United States.

In *Whyte vs. Harris*, (same, p. 263:) "Inspectors of an election are judges of the qualifications of electors, and if they err without wrong intent, the general result shall not be affected." (Minority Report, which the House adopted.)

In *Flanders vs. Hahn*, (same, p. —:) "That a disregard of a mere directory provision of the law cannot annul an election carried on with all the essentials of an election, and with perfect fairness."

In *Bruce vs. Loan*, (same, p. 504:) "That no one should be vested with the right to determine who are and who are not qualified voters save those who are by law clothed with, and by law made responsible for, the proper performance of that duty."

In *McHenry vs. Yeaman*, (same, p. 550:) "That occasional irregularities should not vitiate an election."

Having taken this general view, we proceed to enumerate the specific allegations and complaints made against the Dunbar Township poll.

William Speers was brought in as an officer during the counting of the votes, after the polls were closed, to take the place of Mr. Hurst, the democratic clerk, who was taken ill. Mr. Speers was not sworn. Hurst subsequently signed the returns. We do not consider that the



temporary introduction of Mr. Speers should impair the validity of the poll. He did not force himself in, nor was he objected to by any. He performed his duty with fairness and proper decorum; and, when through counting, his tally of votes corresponded with the tally kept by Mr. Collins, the republican clerk, who in his testimony states:

Q. Was anything said by any member of the board about the impossibility of his discharging those duties without being sworn?—A. Not that I remember of.

Q. Was any objection made to Mr. Speers acting as clerk by any member of the board?—A. I don't think there was.

In *Blair vs. Barrett*, (Contested Election Cases in Congress, p. 311—Mr. Dawes making the report adopted by the House:) “The honest electors should not be disfranchised and their voice stifled from a mere omission of the officers of election to take the oath of office.”

In *Milliken vs. Fuller*, (same, p. 176:) “Election officers irregularly chosen. As no fraud was alleged, the election was regarded as valid.”

In the case of Alderman Boileau in Philadelphia, (2 Parsons, p. 503:) “It was distinctly decided by president judge, King, that the omission of a clerk, called in under the circumstances, to qualify, is not such an irregularity as should induce the court to set aside the election.”

We think we have disposed of this complaint successfully.

In the absence of the proper ballot-boxes, it is proven that a hat and a cigar-box were used to deposit the votes in up to 11 o'clock a. m., when the ballot-boxes were brought by the magistrate, who should have had them at hand at the opening of the poll, and then the tickets were transferred from the hat and cigar-box to the proper boxes. It nowhere appears that any wrong was done in this transfer. It was done by the two inspectors in the presence of all the officers, (p. 17.) The evidence of Mr. Joseph E. Cramer, republican, (p. 314,) goes to show that there was a conspiracy on the part of certain republicans to keep these ballot-boxes away, and thus make it an illegal election, because of the use of the hat and cigar-box. The place of concealment was known to these persons. If the fact of the deposit of tickets in a hat is to be taken as a cause for rejecting an entire poll, then the same objection would apply against the poll in Wharton Township, where Mr. Covode had a large majority. It does not appear that any change was made during the day from hat to ballot-box in this township. (See McCartney's testimony, p. 313.)

It is objected that persons other than the officers were allowed in the room during the day. This indicates no appearance or attempt at fraud. If such was designed, all persons would have been studiously kept out. Every act of the officers was overlooked during the entire day by men of both parties. In fact, one person was present during the entire day, to represent each party, in the capacity, as it were, of watchers. The testimony of Mr. Pope, republican inspector, and Mr. Collins, republican clerk, establishes that no threats were made by any officer against persons offering to vote; that no irregularities existed in the reception of votes; that no votes were taken of persons who did not appear on the list of taxables; that no persons were allowed near the ballot-boxes except the officers, and that they (Messrs. Pope and Collins) were not absent during the day, except for a minute or two to attend to the duties of nature. It is proved that Mr. Guthrie, who seems to have been the republican watcher, was ordered out of the room because of insulting language used against one of the inspectors, but his place was immediately supplied by Mr. Biers, another member of the same political side.

Six more tickets appeared in the box than there were names on the



list of voters. Statement of this fact was made on the return papers; no attempt at concealment. It is not possible to say for whom four of them voted; they cannot, therefore, be counted as against either. It has been uniformly held by courts of Pennsylvania that, unless shown for whom such votes were given, it cannot operate against either party in court. This discrepancy can be easily explained. In a large district like Dunbar, polling several hundred votes, it is not unusual for the clerks to inadvertently omit the names of some who may have voted.

These votes were counted in the presence of the whole board, and the clerks, one a republican and one a democrat, agreed in their tallies. It is further alleged that a body of men, say thirty in number, marched to the ground where the election was held. If they did, it is nowhere shown that they were *illegal* voters. Witnesses for Mr. Foster prove that they halted some distance from the poll and went singly to vote. There is not the slightest evidence of any disorder, threats, or menaces on their part. These men certainly had a right to come there in a peaceable and orderly way. It is no unusual occurrence in country districts for voters to come to the poll together in large numbers. Teams and wagons are constantly used to carry voters, exceeding in number that proved in this case.

It is asserted that much whisky was consumed during the day, which produced noise and confusion. This is not strange. It is the custom for officers of elections to have food and drink sent in the poll-room to them, their party friends demanding their constant presence to see that no unfairness is done. The whisky seems to have been common property, for all contributed to its purchase. Mr. McCullough is said to have been somewhat affected by whisky at times during the day.

In *Thompson vs. Ewing*, 1 Brewster, p. 120: "The mere intoxication of an officer is not a sufficient reason for rejecting a poll."

One by one we have disposed of the complaints and irregularities made against this (Dunbar) township poll. Surely, if they cannot stand singly, they should not be made to prop each other and thus have force combined.

#### YOUNGSTOWN DISTRICT, WESTMORELAND COUNTY.

The reasons assigned by the majority of the committee for the rejection of the Youngstown poll are not such as are sustained by the law or judicial decisions. To disfranchise the citizens of an entire district because an assessor did not perform *all* the duties incumbent upon him, seems to us a stretch of power that at any time may disfranchise the people of a congressional district, or abolish elections in a State altogether.

The duty of the assessor was to take the list of the taxable inhabitants of his district, make at least two copies thereof, and put up said lists in two public places in the district, one of which must be in the place of holding the general election. It is admitted that this was done. Further, it is made his duty to keep a list of the taxables in his possession, subject to inspection at all reasonable times without charge. It is admitted that this was done. Further, he is to attend at what is known as an extra assessment, to be held between the 20th day of August, and prior to ten days before the second Tuesday in October, the day of the election, and at such time add the names of those qualified who applied to be placed on the list of taxables or voters. It is admitted that this was done. He is then required to add the names of all that were extra assessed to the lists that he put up in the two public places in the dis-



trict. It is admitted that this was done. But the last requirement, *i. e.*, to make out duplicates of these lists, and file one in the county commissioner's office, and hand the other to one of the inspectors of the election before 8 o'clock on the morning of said election, was neglected to be done by the assessor. And because of the neglect of this *one*, and not the most material requirement, having fulfilled every other duty incumbent on him, and in so doing acting under the sanctity of his official oath, the majority ask now to reject this entire poll.

If there had been no official act whatever performed by the assessor necessary to the proper conduct of this election, then the committee might, with some propriety, ask for the rejection of this poll. In performing *none* of his duties, the officers of the election would have been compelled to close the polls, or to have proceeded without official knowledge as to who were the taxables and voters of the district; even then we hold that it would have been competent for the officers of the election to have received the votes of all persons offering to vote, who, upon examination under oath, were found to have the constitutional qualifications of voters. But they were placed in no such position by the neglect of this assessor. They were not without a *proper guide* for the conduct of the election. The assessor had done everything that was necessary for the conduct of the poll, except the making of the two copies of the voters alluded to; and when the election officers found they were without their copy, they took the *original* list, with the additional names of the extra assessment added thereto, from the room of the public house where the voting was done, and where, in accordance with law, the assessor had placed it, and used it for their guidance during the election. Was not this as high authority as the *copy* would have been? Was it not higher authority? The *one* was the *original* paper, and the *other* the mere copy, subject to all the chances of error in transcribing.

That the committee should ask for the rejection of this poll because a particular, though secondary list was not produced for the use of the election officers, looks like a pretext for doing by indirection what they could not do directly. Instead of reprobating the conduct of the election officers in this regard, the majority of the committee should commend them for the propriety of their course in seeking for and using in the absence of the copy the original list, from which the copy ought to have been made. In doing so they saved the voters of that district from disfranchisement, and added to the general return of this congressional district a township return as valid and free from any intention of fraud as the return would have been had it been based upon a *copy* of the list. We consider this irregularity gives the House "no hair's breadth of foothold" to stand upon to warrant the rejection of this entire poll.

But, say the majority, nearly thirty-nine names were added to the extra assessment of this district who did not personally apply to be placed on the list, and that they voted at the election. Suppose they did so vote, (and there is no conclusive proof of this,) there is no certainty, as far as the evidence shows, for whom they voted. The testimony further exhibits that those who were so assessed and voted, established their right to vote by showing they possessed the constitutional requisites in the case of unassessed voters. This was all that was necessary, whether on or off the list. Reject the votes of these persons because they were added by the assessor without their personal application, but as soon as this is done you will be compelled to admit them as the votes of persons who had filled all the constitutional requirements in the case of unassessed voters.

We hold, therefore, that this assessment list, made under oath, and



derisively termed by the majority report as "this paper taken from a tavern wall," was properly used in the absence of the copy; that the election officers would have been subject to censure for omitting to use it; and its use gave to the poll, as an expression of the popular will, the same legal effect as the copy could have done. It was an irregularity that was overcome by substituting in the place of the copy the paper from which the copy was to have been made.

All the citations of law and precedence made in reference to Dunbar Township in this report have the same force and applicability to this, the Youngstown district, and go to show the illegality of rejecting the entire poll of either.

The force of the statement that the officers of the election at the Youngstown district were all democrats, and that no democrats were challenged that day, is broken when the further fact is shown that at this poll, as at Dunbar Township, republican watchers were present during the entire day, and their presence there was by the request of the democratic election officers. Does this indicate any fraudulent purpose in the conduct of that election? Could anything be fairer?

Objection is made by Mr. Covode to the reception of the votes at the Hempfield district, in Westmoreland County, and South Union Township, in Fayette County, cast by persons who were inmates of the poor-house or house of employment for said respective counties. On what tenable ground this objection is made we are unable to determine. These men were at the time of the election, and for years before, actual residents of Hempfield and South Union districts, and had no other residence. They were regularly assessed in the districts in which their respective houses are located, according to law, and paid their taxes, in pursuance of the assessment, to the proper officer. If their right to vote is tested by the constitutional provision and the acts of assembly, they are relieved of every possible objection.

The constitution provides as follows:

ART. III., SEC. 1. In elections by the citizens, every white freeman of the age of twenty-one years, having resided in this State one year, and in the election district where he offers to vote ten days immediately preceding such election, and within two years paid a State or county tax, which shall have been assessed at least ten days before the election, shall enjoy the rights of an elector; but a citizen of the United States who had previously been a qualified voter of this State, and removed therefrom, and returned, and who shall have resided in the election district and paid taxes as aforesaid, shall be entitled to vote after residing in the State six months.

The act of assembly of 2d July, 1839, follows the constitutional provision on the subject, and in neither is there any property qualification required.

In the case of this class of voters the objection is not sustained, we find, by any law of Pennsylvania; nor is it sustained by the action of the House of Representatives in the contested election case of *Koontz vs. Coffroth*, thirtieth Congress, first session, (report No. 92, vol. 1, of House Reports, 1865-'66.) In the majority report, which was adopted, and ousted the sitting member, it was held that this kind of vote could "not be deducted from the count of the sitting member. Each State frames its own laws for the maintenance and care of its poor. The laws provide protection for the poor, who, 'by reason of age, disease, infirmity, or other disability,' become unable to work. With regard to the elective franchise by such, the laws of Pennsylvania are silent. As they are not expressly deprived of the right, we cannot see why the unfortunate, provided for by the public, may not vote as if provided for by a parent or a son; certainly not, until the authorities of Pennsylvania shall have decided for themselves the law, for which they have had frequent oppor-



tunities. Therefore we *here* make no deduction from the count of the sitting member."

As to the lunacy vote—four in number—we desire to say that the constitutional requirements do not set up any prohibition as against simple-minded men nor lunatics. The extent of the mental imbecility would seem, therefore, to have been left to the officers of the election to determine; and upon such extent of weak intellect admit or reject the vote when offered. As to one of the four votes, it is not shown at all for whom he (Small) voted. It should, in our judgment, therefore, not be charged as against either the contestant or the contestee.

With reference to the individual votes alleged to have been cast for Mr. Foster upon the different grounds of alienage, lunacy, non-residence, minority, and non-payment of tax, and of which a list is furnished by the majority in their report, we propose to enter into an examination of each individual case so reported.

1st. James T. Martin, of Dunbar Township, it is alleged, was a minor. The testimony of Martin himself (see p. 310) shows that he was informed by his grandfather, who raised him, and who was present at the election and before the board, that he had every reason to believe, both at the time of the election and while this investigation was going on, that he was over twenty-one years of age on the 13th day of October, 1868; and further, that his father died when he was very young, and his mother having remarried, then and now lived in the State of Indiana. This vote clearly should be counted for Mr. Foster.

2d. As to Andrew Work, a reference to the testimony of Beatty (p. 302) will show that Work voted in that township for forty years, owned land there, and does now, and was assessed and paid taxes in that township. His wife was dead, and he resided with his son in Dunbar Township at the time of the election, and for a considerable time prior thereto.

3d. George F. Dawson, of Brownsville, (see p. 319,) testifies that he returned to Pennsylvania in July or August, 1867, and never again left the State with the intention of acquiring a residence elsewhere; has remained in Brownsville ever since, and therefore his vote should be counted for Mr. Foster.

4th. Connelly Westcott, (see testimony of William Campbell, p. 335,) was born in April, 1847, and he was, therefore, between the age of twenty-one and twenty-two years in October, 1868. This fact is shown by the statement of the father and mother of the voter to the witness.

5th. Reason Dean was born on the 15th day of February, 1847, (see testimony of George Dean, the father of Reason, p. 329,) and upon the testimony of a *stranger*, it is proposed to reject this vote against the testimony of his father.

6th. W. S. Johnston, it is shown by the testimony of Dr. F. C. Robinson, (p. 59,) and G. W. K. Minor, (p. 97,) on the day of the election, and while being examined by the election board, repeatedly stated that "his mother had told him he was old enough to vote at that election." What better evidence one could have of his age, except what he might derive from his mother, is not known by the members of the committee who sign this report. We have already rejected the vote of Samuel Ogle, even upon the statement of a witness who heard the mother of the voter state the date of his birth to have been at a time when he could not have been a voter at the time of that election.

7th. Uriah Yeager, jr., it is shown by the testimony of A. A. Boyer, esq., a witness for Mr. Covode, (see p. 85,) was a resident of the district



of North Union Township; that a full examination was made by the board as to his right to vote there and at that election, before his vote was received; it is also in evidence that the same witness was informed that he was a republican, so that if his vote *was* illegal, it surely should not be charged against Mr. Foster.

8th and 9th. As to the votes of William Searight and James Searight, both these gentlemen were clerks in departments in the city of Washington, and returned home, as is done by every clerk in every department here, and their votes should not be charged by Mr. Covode or his counsel against Mr. Foster, especially when the fact is, as we are informed, that the same train of cars which carried one of these gentlemen home also bore A. S. Fuller, esq., who resides in Washington, and Mr. Covode's counsel in this case, to the same place for the purpose of voting for Mr. Covode. The Searights were born in Union Borough, and never voted in any other place, and it will not do to say that their votes should be rejected.

10th. Israel Painter, jr., it is testified by O. P. Falton, (see p. 102,) was engaged in work in Venango County, Pennsylvania, in the oil regions, and for this reason the majority had deducted this vote from Mr. Foster, forgetting that there is no evidence whatever as to how he voted, beyond the fact that his uncle was a democrat, or that he had acquired a new residence; and they also omitted to deduct from Mr. Covode the votes of A. G. Oliver and Morgan B. Oliver, who were precisely in the same condition, (see testimony of Severn, pp. 360, 361,) but which we do not reject as against Mr. Covode.

11th and 12th. Jacob Glunt and Samuel Patterson are shown by the testimony of Jeremiah Mertz, (p. 407,) to have resided in Franklin Township, where they worked for months before the election; they were single men and mechanics, who worked wherever they could find work; that they never claimed any other place as their residence, and that one of them, in fact, owned property in that district assessed against him, and that both of them were born and raised in that township.

13th. Jacob Weitzel's vote is rejected upon the testimony of S. P. Faulk, (pp. 120, 121,) who testifies that his vote was about being challenged at the presidential election for non-payment of taxes, when the collector came to the window and vouched for the payment of taxes that day. It is not to be presumed from such testimony that this voter had not paid a tax within two years as required by law. Neither is it to be presumed that he voted for Mr. Foster from the outside appearance of the ticket. It also appears from the same testimony that he has voted in that district for five or six years, and that his vote was not challenged at that election.

14th. Daniel Bowers, it is testified by his mother, Barbara Bowers, (p. 185,) on the 14th of July, 1869, was twenty-two years of age the preceding month, which would make him between the age of twenty-one and twenty-two years at the time of the election in October, 1868. Joseph Skeeley (p. 372) also testifies that from conversation with his mother, and from an examination of a tombstone, Daniel Bowers was of age at the time of that election, and that he assessed him for tax and collected tax from him for that year.

15th. John Stiers, it is proved by his own testimony, (p. 172,) and he was called by Mr. Covode himself, was a resident of the district of Greensburg; there, in pursuance of his lawful calling, intending to become a resident and actually such, and only prevented from still remaining a resident by the fact that he could not procure such house as suited him.



16th. C. M. Robinson is a single man, engaged in merchandising about a mile and a half from the residence of his father. His father resides in North Huntingdon Township, Westmoreland County, Pennsylvania, where the voter, whose vote is objected to, cast his vote, but his store is in Allegheny County. He was born in that township, and made his home at his father's house, and had his washing done there, and there is no evidence to show that he ever voted in any other district than that in which his vote was cast at this election.

17th. John P. Kunkle, (see his own testimony, p. 415, and the testimony of William Hawk, p. 414.) It is shown he had a right to vote in North Huntingdon Township. His residence was with his mother in that township. He was an apprentice to learn a trade, and as soon as that apprenticeship ended he returned to his home with his mother, not less than four weeks before his election. Hawk, in his testimony, is very clear and decided upon the point of residence, and no possible objection can be urged against this vote.

18th. Daniel Bradley's vote is rejected by the majority in their report on the ground that he never was a citizen. A reference to page 383 will show an admission by Mr. Covode, that the voter was naturalized on the 28th of July, 1856, in the court of common pleas of Blair County, Pennsylvania, and that Daniel Bradley *himself* appeared and produced his certificate of naturalization, and it was agreed then that so far as the testimony of the man Mullen, (pp. 180, 182,) and taken at Irvine, before Notary Hoke, would lead to a different inference, *it is not to be considered*.

19th and 20th. Josiah Plunt and John McIntyre are also rejected by the majority upon the ground that they were not citizens, and these two votes are deducted from Mr. Foster. We are informed, and have every reason to believe, that an admission like that in the case of Bradley was made by Mr. Covode's counsel, and entered by the notary before whom the testimony was taken as to these two votes, but upon referring to the testimony, we do not find it embraced in the report. There is not, however, any evidence (even assuming that the testimony of the man Mullen, pp. 180, 182, should have its *full* weight) that either of these men illegally voted or was not properly qualified as a voter.

21st. Charles Penrose, it seems, voted in the Youngstown district, and it is urged that his vote should be deducted from Mr. Foster. If hearsay evidence is to avail in this case, then this vote should be rejected; but surely, no tribunal governed by any law will listen for a moment to the testimony of any one who testifies only to what some one else has said to him. Certainly this is only hearsay testimony, and no court in Christendom will receive such testimony as *evidence*. (See contested election cases from 1834 to 1865; *White vs. Harris*, p. 264; *Ingersoll vs. Naylor*, p. 34; *Blair vs. Barrett*, p. 316; *New Jersey case*, p. 24.) Lewis Simpson, it alleged by the majority report, is a negro, and not, therefore, entitled to a vote, and it also alleged that he voted for Mr. Foster. The evidence shows such to be the fact, and, under the law, this vote cannot be counted.

22d. Vincent Nichols, it is testified by Brinker, (p. 230,) was a carpet-bagger, and declared that he had voted for Mr. Foster. There is no evidence where or in what precinct he voted, and we apprehend that it is not to be assumed that he voted in one district when he might have voted in another.

23d. Francis Cuslo's vote is rejected by the majority on the ground of non-payment of tax within two years prior to the election held in October, 1868; but there is not the slightest evidence that such is the fact.



It was in evidence (see Faulk, p. 242) that he had paid taxes at the time of the October election, 1866, and nobody pretends to state that he was not regularly assessed after that date, neither is it shown by any one that Mr. Cuslo did not pay taxes subsequently to that time, and in the absence of proof of that fact his vote should not be deducted from Mr. Foster. On the contrary, Shuster, the collector of taxes, says he did pay taxes. (See page 380.)

24th. As to Johnston Sproul, the evidence of Faulk (p. 243) does not establish the fact that Sproul was over twenty-two years of age at the October election of 1866. He therefore had a right to vote without the payment of tax, and it does not follow that because he paid taxes at the November election, that he had not attained the age of twenty-two years between the time of the October and November election.

This not being proven, the decision of the board is conclusive, in the absence of any proof of fraud.

25th. Frank Heiser is objected to on the ground that he did not produce his naturalization papers before the election board. If the declarations of the voter are to be received in evidence, it will be found, by reference to the testimony of Thompson, (p. 106,) that he voted for Mr. Covode; and if his vote is an illegal vote, it should be deducted from Mr. Covode and also added to Mr. Foster.

26th. Peter Adams is objected to as a minor. Neither Isaac George (p. 272) nor Hiram A. Hoops, (p. 273,) who are relied on in this case, prove conclusively the age of the voter, and, in the absence of such proof, it is not to be presumed that this vote was illegal.

27th. Charles Wilson, it is shown by his mother, Mrs. Pleas. Wilson, (p. 420,) was born on the 10th day of October, 1847; and this election having been held on the 13th day of October, 1868, no objection can be made to his vote.

28th. Leander Corbett, it is alleged, is a minor, and that fact is attempted to be shown by hearsay evidence. Houseman so swears; but surely that which is not within his knowledge, but is only stated as hearsay, is not to be regarded as evidence; and the evidence of Houseman (p. 275) shows that his vote was received without objection.

29th. George Chalfant's vote is attacked upon the ground that he is a non-resident. His testimony (p. 323) establishes the fact that he was a resident of Uniontown; that while he temporarily resided in Greene County, he never was assessed in that county; that he was between the ages of twenty-one and twenty-two years, and all the time when away from Uniontown he regarded that place as his home, and so speaks of it in his testimony. He also says that he resided with his mother in Uniontown.

30th. George Long, it is said, was not a resident of the district in which his vote was cast, and had never been naturalized. His testimony (426, 427) establishes that his father was naturalized while he was yet a child—which would also result in *his* naturalization; and that he was a resident long prior to the election. Crombie (p. 172, 173) testifies that Long was in that district in September, 1868.

31st. Edward Develin is attacked upon the ground that he is an alien and non-resident; but his right to vote is shown by the testimony of Long, (pp. 426, 427,) which proves him to be a native-born citizen, and by Crombie (pp. 172, 173) also as to his residence.

32d, 33d, 34th, 35th, and 36th. W. F. Jones, John Boyle, Walter McMichael, Patrick Harkins, and David Robinson are objected to (see Kemp, p. 231) as illegal voters; but in the absence of proof as to the illegality of these voters, and the district wherein such votes were cast,



and the party for whom they were received, certainly they would not be deducted from Mr. Foster; and it is shown very clearly by the testimony of W. C. Guffey (p. 419) that the facts asserted by Kemp are not true. By the testimony of Pender (p. 392) it appears that Kemp had at one time been an *inmate* of the *penitentiary*, as a *criminal*. With this character of witness the committee had better have little to do.

In addition to this it is clearly shown by the testimony of A. B. McGrew, the assessor (and a republican) of Sewickly Township, (see p. 235,) "that he assessed no man unless he saw him or had sufficient evidence that he was in the township;" and by the testimony of John Norcross, the judge, and Caleb Greenawalt, the inspector, both republicans, "that there were *no votes* taken at the Sewickly poll from *any one* who had not *fully* complied with the law," (see p. 376;) and further, the testimony of John Stam, the other inspector, establishes also the fact that there were no illegal votes polled at that district.

37th. John Turner is not shown to have voted illegally. All the evidence goes to show that he was a citizen, and whoever attacks a vote must prove it to be illegal. He voted without challenge, and to require Mr. Foster to show that Turner was naturalized, especially when he is no longer a resident—more than a year having gone by since that election, and he having removed from the district—would be to require such labor as might well induce him to abandon this contest.

38th. George Coleman's vote is rejected because he told Uriah Higgenbottom (p. 89) that he had not been in the State for a period of six months prior to that election. If the declarations of a voter made after the election is over are to be received—only, however, in this case it is hearsay—to defeat an election and overcome a vote, the sooner such is declared to be the law the sooner we will know that all previously accepted rules of evidence are ended.

We concur in the report of the majority as to the votes offered to different election boards to be cast for the respective candidates, but which were rejected, thus allowing to Mr. Foster three votes, and to Mr. Covode six votes, that were refused to be received by officers of the election.

As to the votes of Patrick Cooley, Michael Cooley, John White, Calvin Halfpenny, John Wilson, John Cummings, James Cummings, Patrick Lynch, and John Lyons, of Dunbar Township, it is scarcely necessary to speak beyond saying, that if John R. Smith "is to be believed," (as it is rather *naively* put by the majority in their report,) these men were in that township, as we have already stated, lawfully—in pursuance of their lawful calling, and residents therein. If it be not improper, it may not be amiss to state here, (since Mr. Smith is relied upon to prove a great many things,) that "if Smith is to be believed," we must conclude from the testimony of Mr. Collins, (see p. 448,) as also that of Smith himself, (see p. —,) that Mr. Smith is not to be relied upon as a witness. If he proves anything, he proves that he did acts which were unlawful; and, to use a mild phrase, that he is a rascal; and, such being the fact, he is not credible.

Although we have not, for the purpose of finding out the true results in this case, deducted either of these eight votes, it is said by the majority that one vote was found in the State ballot-box, in Sewickly Township, upon which was the name of Mr. Foster; and this ticket, they say, was in excess of the number of votes upon the list, and that therefore this vote should be deducted from Mr. Foster. How such conclusion can be reached passes our comprehension. If any one can determine that the vote in excess may not have just as likely been cast for Mr. Covode as for Mr. Foster, he will have succeeded better than can be .



determined by those who sign this report. So, also, with regard to one vote in South Huntingdon Township, which was found on the floor, and counted for Mr. Foster.

The following statement will exhibit the names of the voters which, in the judgment of the minority, were illegally cast for Mr. Covode, the reasons assigned for their illegality, a reference to the witnesses who testify in regard to each, and the page upon which their testimony is to be found.

1st. Isaac Johnson, it is alleged upon the part of Mr. Foster, voted for Mr. Covode, in Wharton Township, of which he was not then a resident. He was a married man, and his wife, with whom he was then residing, lived in North Union Township, and although he owned a farm in Wharton, and occasionally visited there, his residence has never been in that township since his marriage, and his vote, therefore, should be deducted from Mr. Covode. (See testimony of McCartney, p. 313; Van Bremen, pp. 311, 312, 323.)

2d. James Chorning, it is clearly shown, voted at the election in Wharton Township, and for Mr. Covode, and that he was not then a resident of that township. (See testimony of McCartney, pp. 313-314; Van Bremen, pp. 311-312; McCullough, p. 314.) This vote should be deducted from Mr. Covode.

3d. Azariah Shaw is shown by the testimony of McDowell (p. 33) and Boyd (p. 331) to have voted illegally, and for Mr. Covode. He was then a resident and had a family residing in Ohio; was in Unionboro only under medical treatment, and had not acquired any residence in this State. This vote, therefore, should be deducted from Mr. Covode.

4th. James Kean was a resident of Venango County, Pennsylvania, and was not entitled to vote in Tyrone Township, and his vote cast in that township was therefore illegal. He came only to get married at the time of the election and voted for Mr. Covode, and left the day after the election. When here he evidently did not intend to remain, as is shown by the testimony of Kean, (p. 309,) wherein he states that his son James had a man in his place while he was absent from Venango County. This vote, therefore, should be deducted from the count for Mr. Covode.

5th. John M. Larimer, who voted for Mr. Covode in Sewickly Township, it is proved by the testimony of Colonel McFarlane, (pp. 373, 374,) an uncle of the voter, resided in the city of Pittsburgh and never had a residence anywhere in that congressional district.

6th. John M. Haymaker moved to West Virginia, was there elected a justice of the peace and appointed postmaster, and acted as such after being duly commissioned, and did not again return to Pennsylvania until in June, 1868, which would be only four months prior to the October election in that year. It is in evidence that he voted for Mr. Covode in October; that in November he offered to vote, and his vote was rejected upon the ground that he had not, at that time, acquired a right to vote. (See testimony of Clark, p. 278; Harvey, p. 379.) Of course, this vote should be deducted from Mr. Covode.

7th. Frank Heiser it appears voted for Mr. Covode without presenting his naturalization certificate to the board. (See Thompson, p. 106.) This vote is erroneously charged against Mr. Foster in the majority report, and has been deducted from him. The fact shows that it should just be reversed.

8th and 9th. William Hartford, *alias* Fletcher, and J. D. Davis voted for Mr. Covode in Kuhn's district, in Unity Township. Neither of these men were residents of that district, and their votes should be deducted



from Mr. Covode. They were mere sojourners there, on a visit, not properly qualified to vote in that district, not known to the assessor; but one of them was assessed under an assumed name; and both left that district the Friday after the election for the State of Ohio. (See testimony of Barndollar, p. 358.)

10th. Jacob Justice. It is shown by the evidence of M. S. Overholt, (see p. 223,) a witness upon the part of Mr. Covode, that Justice was in the wood and willow ware business with Rowe, Euston & Co., in Philadelphia, Pennsylvania, and had been there probably eighteen months or two years; he was not engaged in any business in Mount Pleasant, was there only occasionally on a visit, and voted in Mount Pleasant Borough at the October election of 1868 for John Covode for Congress. That he had a legal residence in Philadelphia, and was a qualified voter there, cannot be questioned, and this vote, therefore, should be deducted from Covode.

11th. Lyman B. Sherrick also voted in Mount Pleasant Borough for Mr. Covode, while it is shown by the testimony of M. S. Overholt (p. 223) that he was then engaged in doing business in Philadelphia, Pennsylvania, with Adamson & Feters, in the notion business, and had been so engaged for, perhaps, a year previous to that election; that he did not own any property in Mount Pleasant; that he was a married man, and had taken up housekeeping in Philadelphia. This vote should be deducted from Mr. Covode.

12th. Judson Newmyer also voted for Mr. Covode in Mount Pleasant Borough, although, as is shown by the testimony of M. S. Overholt, (p. 223,) he was engaged in doing business for Jesse Lippincott, of Pittsburgh, in the grocery business, and certainly he was not a resident of Mount Pleasant Borough. This vote, therefore, should be deducted from Mr. Covode.

13th. David K. Faulk, in Alleghany Township, voted for Mr. Covode, and it appears from the testimony of his brother (pp. 243, 244) that for four years almost he had been in Oil City, in Venango County, Pennsylvania, and only came into the district in which he voted *two* or *three* days before the election. This vote should be deducted from Mr. Covode.

14th, 15th, 16th, 17th, 18th, 19th, 20th, and 21st. John C. Paul, Samuel McCune, William J. McCune, Nelson Henry, Melton Bartley, John Decker, David Ransom, Ephraim Taylor, voted for Mr. Covode in Blairsville. It is shown by the testimony of Byers, (p. 247,) the republican clerk, that he never saw Paul before or since the election, and that he left the town on the noon train (see p. 248) the day upon which the election was held. Paul, it is in evidence, is mail agent on the Pennsylvania railroad. Samuel McCune (see Byers, p. 247) lived at Lewistown or Columbia or Port Deposit, and was in an engineer corps there then, and yet. He came to Blairsville, it also appears, at noon of either the day of the election or the day before, and went away as soon as the election was over. William J. McCune (see Byers, p. 247) is a brakeman on a passenger train between Pittsburg and Altoona, and came to Blairsville either on Saturday or Monday evening previous to the election. He was allowed to vote (see Byers, p. 246) on his own oath, and without any other proof of residence being required by the board, and left Blairsville on the day of the election. Milton Bartley came to Blairsville (see Byers, p. 247) "several days before the election," and although the witness has been a resident of Blairsville since 1861, he does not recollect of seeing the voter there at any time except at the election. Nelson Henry (see Byers, p. 248) was mail agent on



the West Pennsylvania railroad, ate breakfast and supper, and had his lodgings in Alleghany City, but took his dinner in Blairsville. He voted for Mr. Covode, without the shadow of right, and his vote should be excluded from the count.

Ephraim Taylor (see Byers, p. 248) was an engineer upon the West Pennsylvania railroad, and the facts in his case are precisely the same as in the case of Henry. We deduct his vote from Mr. Covode.

John Decker see (Byers, p. 248) was time-keeper at the soda works in Alleghany County; "he had been there two years or more, and only reached Blairsville either Saturday or Monday previous to the election." He voted on his own oath, as to his residence and all, for Mr. Covode, and we deduct his vote.

David Ransom (see Byers, p. 248) came to Blairsville on the evening of the election; he was working in the railroad company's shops; had been absent for a couple of years. He voted for Mr. Covode and we deduct his vote.

We cannot fail to conclude, from the evidence presented, that these persons were improperly introduced into that district for the purpose of aiding in the election of Mr. Covode.

Other votes are rejected in the same precinct, but the foregoing are the only ones that we feel called upon to exclude from the count.

22d. James Boyd, who voted for Mr. Covode, in Irwinboro, was not a resident, as appears by the testimony of Cort, (p. 387,) who is very clear that Boyd had not lived in Irwin for three or four years prior to that election. McQuaide (pp. 385, 386) testifies that he is running on the railroad, and lies over in Pittsburg, where his residence is, and is positive that he had no residence in Irwin for at least *one year* before the October election of 1868. Boyd himself (p. 271) says he claimed Irwin as a residence, because he had *relatives* living there, and had himself at some prior time lived there; since then had passed through the borough on his train running from Pittsburg, in Alleghany County, to Conemaugh, in Cambria County. This vote should be deducted from the count of Mr. Covode.

23d. John Worthington, who voted for Mr. Covode in German Township, from the testimony of Thomas A. McKean, (pp. 232, 332, 342,) was not a resident in that township. His vote ought, therefore, to be deducted from Mr. Covode.

24th. The testimony of Mr. McKean also proves that John Connelly voted for Mr. Covode, in German Township, he not having such residence as entitled him to vote in that district, or any other in the State of Pennsylvania. This vote should also be deducted from Mr. Covode.

25th. John Swan proves (p. 361) that Rev. W. C. Kaufman's family resides in Chambersburg, Pennsylvania, where he would have been legally entitled to vote; if so, his vote was improperly received in West Newton, Westmoreland County. He could not have had such a residence in two different districts at the same time as would entitle him to vote in either. He voted for Covode, and should be deducted from his poll.

26th. Rev. William Ewing voted for Covode in Franklin Township. His right to vote in that county was objected to on two grounds: 1. That he had not such residence there as entitled him to vote. 2. That he had not paid a tax as required by law to entitle him to a vote. The evidence of S. J. Miller (p. 383) leaves the question of residence doubtful, but it is clear that there was no personal tax assessed on him within two years, nor had he paid such tax. On this ground, his vote should be deducted from Mr. Covode.



27th. William Williams, who voted for Mr. Covode at Irwinsboro, it is clearly proved by James M. Guffey (p. 404) and by Eli McCormick, (pp. 388, 389,) inspectors of that election, voted on fraudulent papers, and on that ground his vote was rejected at the November election, the inspectors only differing in their evidence as to whether or not Williams produced the same papers at the November election as he did at the October election, and in this Williams himself (see p. 418) corroborates Mr. Guffey. We have deducted this vote from the count of Mr. Covode.

28th. James McWilliams, it appears from the testimony of Robert S. Robinson, (p. 416,) voted for Covode in Penn Township, he then being a resident of the city of Philadelphia. This vote should be deducted from Mr. Covode.

Israel Gintelsberger and Tobias Gintelsberger are both proved (see Horrell, p. 410, and Bennett, p. 408) to have voted for Mr. Covode in Fairfield Township, and that both are of unsound mind. Horrell (p. 410) does not consider them capable of judging between right and wrong. While we do not accept the conclusion of the majority upon the objection to persons of unsound mind, yet, if they are to deduct such votes from Mr. Foster, unquestionably like votes should be deducted from Mr. Covode.

J. Wesley Lee, it is shown by Millholland (p. 429) and Lutz, (p. 424,) voted in Rostraver Township for Mr. Covode, and is a lunatic. His case is precisely similar to those immediately preceding this, and even a stronger case, his lunacy being so strongly marked as to prevent him from even knowing his own acts.

29th. John Barner voted at the election in Rostraver Township for Covode; he was a foreigner, and was not naturalized. He claimed the right to vote on the ground, as he alleged, that his father was naturalized when he was a minor, which gave him the right of citizenship. This would be true if the naturalization certificate of his father had been produced to the board, but it was not. In the absence of it his own oath was taken as to the fact; this was improper and illegal. The father himself could not vote, under the statute of Pennsylvania, on his own oath that he was naturalized; it requires the production of the certificate of naturalization, except when he was a voter in the district for ten consecutive years. If this kind of proof could not avail the father, it is difficult to perceive how it could avail the son. (See testimony of Lowry, p. 433, and Houseman, p. 425.) This vote was improperly received and should be deducted from Mr. Covode.

30th. Levi Hanlin voted in East Mahoning Township for Mr. Covode. The evidence of Richardson (p. 436) shows that this man was not a resident of that district at that time, and not entitled to vote therein. He had been there but a few days, and has never been seen there since the election. This vote we are compelled to deduct from Mr. Covode.

31st. Wilson Miller, it appears from the testimony of Blue, (p. 440,) and Brady, (p. 440,) voted in Payne Township for Mr. Covode. From his own declarations it is very clear that he was yet a minor at the time of that election. This vote we deduct from Mr. Covode.

32d. Wm. Butterbaugh voted, it would appear, at the election in Green Township, when his residence, as is shown by Wagoner, (p. 444,) was in Grant Township, to which district he had moved in the spring prior to that election. He is proved also to have been a republican, and it is not unfair to assume that he voted for Mr. Covode. We have deducted this vote from him.



## RECAPITULATION.

Foster's majority .....	41
Add illegal votes cast for Covode, as appears in arguments, not embracing persons of unsound mind, twenty of which are conceded by the majority report, as per schedules marked A and B. ....	54
Add votes offered to be cast for Foster, but illegally rejected by the election officers .....	3
<hr/>	
Foster's majority .....	98
Deduct illegal votes cast for Foster, including those votes cast by lunatics, claimed and established by majority report as per Schedule C. ....	36
Add votes offered to be cast for Covode, but illegally rejected by the election officers .....	6
Add vote supposed for Foster in excess of tally list of names in Sewickly Township .....	1
Also one of like character in South Huntingdon .....	1
<hr/>	44
<hr/>	
Actual majority for Foster .....	54
<hr/>	

If individual cases are to be inquired into and deductions made, less than this majority, upon a fair examination of the evidence in each case, Mr. Foster cannot have.

If anything more is needed in this case, it is to be found in the fact that at the same election General Hartranft, the republican candidate for auditor general, received in this district a majority of 279, and this notwithstanding the fact that Mr. Boyle, the democratic candidate for that office, was a resident of Fayette County, one of the counties that compose the district, and ran considerably ahead of his ticket.

The vote for auditor general was as follows:

Indiana County—Hartranft .....	4,842
Fayette County—Hartranft .....	3,745
Westmoreland County—Hartranft. ....	5,335
<hr/>	
Total .....	13,922
Indiana County—Boyle .....	2,301
Fayette County—Boyle .....	4,773
Westmoreland County—Boyle .....	6,569
<hr/>	13,643
<hr/>	
Hartranft's majority .....	279
<hr/>	
<hr/>	
In the same counties—	
Foster received .....	13,807
Covode received .....	13,766
<hr/>	
Foster's majority .....	41
<hr/>	

Still further to illustrate the weakness of Mr. Covode's case, let me refer you to the vote in this district at the election in October, 1869, for governor:



In Indiana County—Packer had.....	2, 062
In Fayette County—Packer had.....	4, 217
In Westmoreland County—Packer had.....	6, 195
<b>Total</b> .....	<b>12, 474</b>
In Indiana County—Geary had.....	4, 003
In Fayette County—Geary had.....	3, 339
In Westmoreland County—Geary had.....	4, 853
	<b>12, 195</b>
<b>Packer's majority</b> .....	<b>279</b>

SCHEDULE A.

The following table exhibits the votes admitted by the majority report to have been illegally cast for Mr. Covode, which, on examination on our part, satisfies us are well established by the evidence:

Name.	Place of voting.	Illegality.	Evidence.
<b>FAYETTE COUNTY.</b>			
Martin Lutz.....	Uniontown Borough.....	Minor.....	98, 99, 328, 329, 330
Jacob Sanders.....	Connellsville.....	do.....	320
Griffith Wells.....	Fayette City.....	Non-resident.....	336
<b>WESTMORELAND COUNTY.</b>			
Andrew Rahl.....	North Huntingdon.....	do.....	104, 373, 415
Jacob Martz.....	Penn Borough.....	do.....	370, 383
J. M. Clements.....	Washington.....	Minor.....	377, 438
Aaron Jeffries.....	North Huntingdon.....	Non-resident.....	416
Bennett Van Kirk.....	Rostraver.....	do.....	421, 424, 433
Sparks Cooper.....	do.....	do.....	437
William Ray.....	do.....	Negro.....	432
William R. Snyder.....	Bolivar.....	Voted twice.....	417, 444, 445
<b>INDIANA COUNTY.</b>			
John Mullen.....	Salzburg.....	Minor.....	383
Henry H. Seger.....	North Mahoning.....	Non-paym't of tax.....	434, 446
John Winebark.....	do.....	Minor.....	434, 435
George R. Bohler.....	Center Township.....	Non-resident.....	437, 438
George W. Kephart.....	Cherry Hill.....	Minor.....	438, 439
Calvin Hall.....	Washington Township.....	do.....	440, 441
James McQuonn.....	North Mahoning.....	do.....	441
David Proctor.....	Greene.....	Negro.....	442, 443, 447
Adam Bowers.....	Brush Valley.....	Non-assessment.....	442

SCHEDULE B.

The following table exhibits the votes which, in our judgment, the evidence clearly shows were illegally and improperly cast for Mr. Covode, in addition to the twenty shown in Schedule A, and admitted by the majority in their report:

District.	Name of voter.	Reason.	Evidence.
<b>FAYETTE COUNTY.</b>			
Wharton Township.....	Isaac Johnson.....	Non-resident.....	313, 314
Do.....	James Chorning.....	do.....	313, 314, 311, 312
Union Borough.....	Azariah Shaw.....	do.....	330, 331
German Township.....	James Kean.....	do.....	309
<b>WESTMORELAND COUNTY.</b>			
Sewickly Township.....	John M. Larimer.....	do.....	374
Franklin Township.....	John M. Haymaker.....	do.....	378, 379



## SCHEDULE B—Continued.

District.	Name of voter.	Reason.	Evidence.
INDIANA COUNTY.			
Payne Township	Frank Heiser	Non-resident.	106-107
WESTMORELAND COUNTY			
Unity Township	J. D. Davis	do	358
Do	Wm. Hartford, <i>alias</i> Fletcher	do	358
Mount Pleasant Borough	Jacob Justice	do	223
Do	Lyman B. Sherrick	do	223
Do	Judson Neumyer	do	223
Alleghany Township	David K. Faulk	do	243, 386
INDIANA COUNTY.			
Blairsville	John C. Paul	do	247, 248
Do	Samuel McCune	do	247
Do	Wm. J. McCune	do	247, 246
Do	Nelson Henry	do	248
Do	Milton Bartley	do	247
Do	John Decker	do	248
Do	David Ransom	do	248
Do	Ephraim Taylor	do	248
WESTMORELAND COUNTY.			
Irwin	James Boyd	do	385, 386, 367, 271
FAYETTE COUNTY.			
German Township	J. F. Worthington	do	232, 233, 234
Do	John Connelly	do	232, 233, 234
WESTMORELAND COUNTY.			
West Newton	W. C. Kaufman	do	361, 362
Peun Township	Rev. Wm. Ewing	do	383
Irwin	Wm. Williams	Alien	368, 418, 404
Penn Township	James McWilliams	Non-resident.	416
Rostraver Township	John Barner	Alien	433, 425
INDIANA COUNTY.			
East Mahoning	Levi Hamlin	Non-resident.	436
Rayne Township	Wilson Miller	Minor	440, 441
Greene Township	Wm. Butterbaugh	Non-resident.	444

## SCHEDULE C.

The following table will show the votes that, in the judgment of the minority, are erroneously deducted by the majority from Mr. Foster, as stated in their report on page 11:

No.	Name.	Place of voting.	Ground of illegality.	Evidence.
1	James T. Martin	Dunbar	Minor	310
2	Andrew Work	do	Non-resident	302
3	George F. Dawson	Brownsville	do	319
4	Connelly Westcott	Fayette City	Minor	335
5	Reason Dean	Menallen Township	do	326
6	W. S. Johnson	Union Borough	do	59, 97
7	Uriah Yanger, jr	North Union	Non-resident	85
8	Wm. Searight	Union Borough	do	98
9	James Searight	do	do	98
10	Israel Painter, jr	South Huntingdon	do	102, 361
11	Jacob Glunt	Franklin	do	407
12	Samuel Patterson	do	do	407
13	Jacob Weitzel	Alleghany	Non-payment of tax	120, 121
14	Daniel Bowers	North Huntingdon	Minor	185, 372
15	John Steirs	Greensburg	Non-resident.	172
16	C. M. Robinson	North Huntingdon	do	416
17	John P. Kunkle	do	do	414, 415
18	Daniel Bradley	do	Alien	383
19	Josiah Plant	do	do	180, 182
20	John McIntyre	do	do	180, 182
21	Charles Penrose	Youngstown	Non-resident	220
22	Vincent Nichols			230



## SCHEDULE C—Continued.

No.	Name.	Place of voting.	Ground of illegality.	Evidence.
23	Francis Cuslo .....	Alleghany .....	Non-payment of tax .....	242, 380
24	Johnson Sproul .....	do .....	do .....	243
25	Frank Heiser .....	Rayne .....	Alien .....	106
26	Peter Adams .....	Unity .....	Minor .....	272, 273
27	Charles Wilson .....	Rostraver .....	do .....	420
28	Leander Corbett .....	do .....	do .....	275
29	George Chalfant .....	Union Borough .....	Non-resident .....	323
30	George Long .....	Rostraver .....	Alien and non-resident .....	172, 426, 427
31	Edward Devlin .....	do .....	do .....	172, 426, 427
32	W. F. Jones .....	Sewickly .....	Non-resident .....	376, 419, 392, 235
33	John Boyle .....	do .....	do .....	419, 376, 392, 235
34	W. McMichael .....	do .....	do .....	419, 392, 376, 235
35	Patrick Harkins .....	do .....	do .....	419, 392, 376, 235
36	David Robinson .....	do .....	do .....	419, 392, 376, 235
37	Jno. Turner .....	Connellsville .....	Alien .....	53, 56
38	George Coleman .....	Luzerne .....	Non-resident .....	89

As to the vote of Peter Small, an alleged lunatic, it is not shown, even if it be concluded that persons of that class are to be excluded from voting, for whom he voted; and we cannot deduct this vote from either of the parties to this contest.

The minority of the Committee of Elections therefore recommend the adoption of the following resolution:

*Resolved*, That by reason of the foregoing facts, Henry D. Foster is entitled to represent the twenty-first congressional district of Pennsylvania for the forty-first Congress in the House of Representatives of the United States.

SAM. J. RANDALL.  
ALBERT G. BURR.  
P. M. DOX.

## VAN WYCK vs. GREENE.

Where foreigners were naturalized contrary to United States and State laws it was held that their votes shall be rejected.

Votes were rejected where inspectors refused to put the preliminary oath to voters as required by law.

Where frauds were proved sufficient for the rejection of a poll it was held that it shall not be thrown out because the contestant did not specifically demand the same in his notice.

The report was adopted, (Feb. 16, 1870,) yeas, 118; nays, 61.

February 3, 1870.—Mr. R. R. Butler, from the Committee of Elections, made the following report:

*The Committee of Elections, to which was referred the case of contest from the eleventh district of the State of New York, to wit, Charles H. Van Wyck vs. George W. Greene, presented the following report:*

The majority for the contestee as returned is three hundred and twenty-three. The contestant gave notice of his intention to contest as required by law, and in said notice he specified upon what he relied and expected to prove. Contestant charges fraud and illegality in issuing naturalization papers and illegal voting, and that the board of inspection of registry and election acted unlawfully and fraudulently. The contestee denies all the allegations, and in his answer charges fraud and illegality in issuing naturalization papers in the interest of



contestant and illegal voting, and the use of money to hire and bribe voters by contestant and his friends, but admits that the naturalization mentioned was irregular.

The first to determine is, was the naturalization of foreigners, as shown by the proof, who participated in said election, done in compliance with the laws of the United States and the State of New York, and can we give it our sanction? The law was decided by the supreme court of the State of New York, (see Barbour's Reports, vol. xviii, page 444.) In that case the court said the powers upon courts in admitting aliens to the rights of citizenship are judicial and not ministerial or clerical, and consequently cannot be delegated to the clerks, and must be examined by the court itself. An examination must be made in each case sufficient to satisfy the *court* of the facts upon which the application is based, and upon which it must fail if not proven to the satisfaction of the court. The court, in the same case, adds: "The practice of clerks of courts in issuing certificates of citizenship without any application being made to the court, and on proof of residence only, is an abuse which needs be corrected." How utterly disregarded was this decision of the highest court in the State in the naturalization of foreigners in the eleventh district of the State, where the decision was made! By reference to Schedules B, C, D, and F, beginning at page 133 of the printed evidence, it will be seen that in the months of September and October, 1868, the two months preceding the election in the aforesaid district, there were naturalized eight hundred persons in one county, to wit, Orange. Contestee admits that there were naturalized in said county of Orange, it being one of the counties composing said eleventh congressional district, in the year 1868, eight hundred and thirty-five persons, (see his brief, page 4, at the top.) Contestee states that the answer to the number so naturalized is exceedingly plain, as one-third of that number came from counties outside of said district; and to sustain his statement he refers to the testimony of Louis Cuddeback and King Chandler, on pages 188 and 189, printed evidence.

On looking to the proof as per Schedules B, C, D, and F, we find that Cuddeback only issued about two hundred of the certificates of citizenship, and out of eight hundred and thirty-five issued in said county of Orange, consequently he did not occupy the position to certify satisfactorily on that point, as three-fourths of said eight hundred and thirty-five had received their papers from his deputies and special deputies, and at various places. Another excuse is given by the contestee for the large number naturalized in said county during the year 1867. That is, that it was the first presidential election since the rebellion, and that during the rebellion foreigners would not file their declarations of intention to become citizens, to avoid the draft, and that naturalization was during the war to a considerable extent suspended. There might be something in that statement; but as a historical fact we know that in the year 1866, more than a year after the surrender of the rebel armies, New York elected a governor, members to the State legislature, and members to the fortieth Congress, and the contest between Governor Fenton and Mayor Hoffman was bitter and excited, and during that year the usual number only were naturalized, to wit, from fifty to one hundred. But in two months eight hundred foreigners are as by magic changed from aliens to citizens of the United States, ready and anxious to contribute their mite to the party who put in motion the easy-going machinery that so suddenly and conveniently made them citizens. By reference to Schedules B, C, D, and F, it will be seen that the name of



Patrick O'Brien is put down as a witness for forty-seven persons to obtain their naturalization papers. The evidence discloses the fact that there are four Patrick O'Briens, and they are all sworn as to their being witnesses as aforesaid. Patrick No. 1 (see page 26) was a witness for three. Patrick No. 2 (page 18) was not a witness for any one. Patrick No. 3, a witness for one, (pages 30, 31,) and Patrick No. 4 for one. So forty-two are disclaimed by the Patrick O'Briens. The proof fully and satisfactorily establishes the fact that the clerks and deputies issued naturalization papers at various places other than in court. Louis Cuddeback swears (see page 188) that at one court he appointed four deputies to make out naturalization papers, and that they operated in a jury-room, and that he (Cuddeback) made it a rule to visit said jury-room and see how they were getting along, and to see that they did it right. That on that occasion he was ill, and in going to the water-closet he would call in as he went by the jury-room; and that the judge took no part in the business, (see page 192, at the top.) Owen Pilley swears that he received his papers at the engine-house, and that there were one hundred others there who were brought up from the coal dock in wagons, (see page 27.) Lewis E. Carr, on page 94, swears to the manner of proceeding in naturalization cases in Newburg, in said district in October, 1868.

LEWIS E. CARR sworn for Mr. Van Wyck:

Question. Where do you reside?—Answer. Port Jervis.

Q. What is your occupation?—A. Lawyer.

Q. Was you present at the court in September and October while persons were being naturalized?—A. I was at the court in Newburg in September, and at Goshen in October.

Q. Tell us what you saw as to the mode and manner of naturalizing.—A. I think the court opened at Newburg about 11 o'clock a. m. There were many there to be naturalized. The confusion became so great that the clerk gave notice that Mr. S. E. Dimmick would go in the petit jury-room and issue papers there: Mr. Dimmick then left the court-room, and a great number followed him. The crowd continued great, and the clerk said Mr. W. J. Dickson would go down in the grand jury room and issue papers there; he left the court-room and a portion of the crowd followed him. The clerks continued issuing papers at the desk for some time, and a very little business was being done by the court; and that about half-past 12 the judge came down from his desk and whispered to the clerk that if he didn't see him there the court was open all the same. He then took his hat and left the court-room, and did not return until some time past 2 o'clock. Soon after that Mr. Dickson returned to the court-room, took his seat inside the bar, and commenced issuing papers there. They continued issuing papers until after 2 o'clock, until about all in the court-room had got their papers. That was about all I saw at Newburg. There were, I thought, during the time I was there about one hundred naturalized.

Q. Did the judge take any part in the naturalization in any way?—A. No.

Q. You say you was present at Goshen; how was naturalization over there?—A. There was a special term of the county court held at Goshen, and they were naturalizing people there; I was present.

Q. How was it done there?—A. The clerk issued papers in the court-room, and Mr. Elliot, the deputy clerk, issued them down stairs in the sheriff's room.

On page 36 we have the evidence of George H. Clark as to Schedule C; also the time and illegal manner in which the clerk Cuddeback did business, to wit:

GEORGE H. CLARK sworn for Mr. Van Wyck:

Question. Where do you reside?—Answer. Newburg.

Q. What is your profession?—A. Lawyer.

Q. Did you visit the clerk's office of this county; and if so, when?—A. In the month of October last, I think.

Q. For what purpose?—A. To examine the record as to the naturalization papers granted at county court in Newburg, in same and previous month.

Q. Did you examine record and get copies of same?—A. Yes.

Q. Have you those copies with you?—A. I believe I have.

Q. Will you state what facts you obtained?—A. First, I found men naturalized upon



their first papers. They were signed by different clerks, Cuddeback, Dickson, Dimmick, Shaw, Millsparagh. Next, the time when each got first papers, and the clerk who signed them. Next, when second papers were obtained, and clerk who signed them; and witnesses to second papers. I found in the case of Patrick Flynn, who obtained his first papers, in February 1866, that his second papers were obtained September 28, 1868, signed by L. Cuddeback, without a witness. In case of James Gorman, first papers obtained October 31, 1866, at New Jersey, Stout, clerk; second papers obtained September 28, 1868, signed by L. Cuddeback. Robert MacFarlan obtained first papers October 23, 1866, and second papers September 30, 1868; last papers signed by W. T. Shaw, as special deputy clerk.

Q. Does the paper shown you contain the names, together with the kind of information you have stated, of all the persons which the county records show were naturalized on presentation of first papers at county court in Newburg, in September and October last?—A. To the best of my belief it does.

(Mr. Van Wyck offers the paper spoken of in evidence. Objected to on the ground that it is not a certified or exemplified copy of the record of which it purports to give information, and that it is improper. Received and marked Schedule B.)

Q. Did you ascertain from the records the names of other persons naturalized at same court?—A. I did; they purported to be persons naturalized on the ground that they were under eighteen years of age when they came to this country; I found the name of the clerk who signed the separate papers, the dates when obtained, and the name of the witness.

(Paper shown witness.)

Q. Does the paper contain all the information which you obtained from the records as to that class of persons at the Newburg court?—A. I believe it does.

(Paper offered in evidence. Objected to on same ground as last above. Received and marked Schedule C.)

Q. State any other fact you obtained which appears on Schedule C.—A. I found that out of the number naturalized under eighteen, the greater portion of the applicants and witnesses signed their names by making their marks; no residence given of naturalized persons.

Q. From the said records did you obtain any information as to another class of persons naturalized at the same court?—A. I did.

Q. State it.—A. Those that were obtained on the purported ground that they had been in the military service of the United States, I obtained the name and residence of the individual naturalized, the date of his papers, and the name of the clerk or deputy who signed them.

(Paper shown witness.)

Q. Does this paper contain that information?—A. I believe it does.

(Produced—objected to as before—and marked Schedule D.)

Q. Were these records furnished you by the county clerk in the county clerk's office?—A. Yes; and told me by him to be the complete list of the names of the persons naturalized at the county court in Newburg, held in months of September and October last.

Cross-examined:

Q. How many persons appear to have been naturalized of the class stated in Schedule B?—A. About ninety.

The testimony on the subject of naturalization is very full, and clearly establishes the fact that the law was totally disregarded and frauds perpetrated. The clerk, and all his deputies, regular and special, were democrats, and worked in the interest of their political friends. It further appears from the evidence that, before the said election, public attention was directed to the frauds practiced in obtaining naturalization papers in said county of Orange, and that the district attorney made an effort to have the matter investigated by a grand jury of the county; and that after the subject had been before the grand jury several days the foreman notified the district attorney that he would not act on the cases, and had destroyed a part of the testimony taken before the jury, and would not surrender the same to the district attorney, as the law directs. And the facts and circumstances warrant the assertion that the democratic judge winked at the same. See the evidence on pages 41 and 42, as follows:

Question. Was general attention called to election and naturalization frauds in this county and your ward before election?

(Objected to.)



Answer. There was.

Q. Was any investigation made with the view of ascertaining illegal and fraudulent naturalization papers and illegal votes on the registry lists; if so, when, and where, and by whom? State fully.—A. The only investigation I know of was an investigation before the grand jury on complaints against parties whose names appeared as witnesses for various persons in obtaining their naturalization papers. I was at that time district attorney of the county, and subpoenaed the clerk of the county, who appeared and produced before the grand jury the affidavits upon which certificates of naturalization had been granted. On that examination I subpoenaed before the grand jury the affidavits upon which certificates of naturalization had been granted. On that examination I subpoenaed before the grand jury many men whose certificates had been granted but a short time previous by the clerk of this county and deputies. Now I do not know that I should state what took place on the examination of these men before the grand jury, because I was district attorney.

(Mr. Greene objects to witness disclosing any of the testimony given before the grand jury by witnesses subpoenaed before them on this or any other subject, for the reasons, that he was the prosecuting attorney of the county, acting officially; that the minutes of the grand jury are the property of the grand jury until delivered up to the prosecuting officer, and that the giving of such testimony is to contravene and defeat the whole object of grand juries; and again, that the minutes themselves are the best evidence of the testimony taken before the grand jury.)

Witness states minutes are not in existence.

Mr. Greene asks that the witness be required to state the source of his information as to the non-existence of the minutes; and witness answers: My information is derived from a communication made by the grand jury in open court to the court prior to their discharge.

Mr. Wilkins, for Mr. Van Wyck, insists on the witness proceeding.

Mr. Greene objects.

The register rules that he cannot require witness to disclose testimony taken before the grand jury while he was district attorney; but if the witness pleases he can proceed.)

One witness was subpoenaed against Patrick O'Brien. The affidavits on which he got his papers were shown to him, signed by Patrick O'Brien, by making his mark. This witness was the person naturalized.

The affidavit signed by him purported to show he came to this country under eighteen years of age. His evidence was that he was between thirty and forty years of age when he came here, or older—I don't remember the exact age; that he did not know Patrick O'Brien; that he did not know who he was; while the affidavit signed by Patrick O'Brien to such papers purported to show that he had known this witness for the last five years, and that he came to this country under eighteen years of age.

There were other parties who had obtained naturalization whose witnesses on obtaining such certificates were Patrick O'Brien, which certificates were obtained on the ground that they arrived in this country under eighteen years of age, but who testified before the grand jury they were over eighteen years of age when they came to this country.

This testimony was taken by the clerk of the grand jury, and I think I conducted the examination, or the greater part of it.

This examination ran along through two or three days, and just before the grand jury were being discharged I was informed by the foreman, in response to an inquiry I made, that they did not propose to act upon these cases. I then asked the clerk of the grand jury for the minutes of the evidence given before such grand jury, and was informed by Mr. Thomas Christie, the foreman, that a portion of the evidence had been destroyed. I told him I then wanted the balance of the evidence; that it was usual and customary for grand juries to leave with the district attorney all evidence taken before them, whether indictments were found or not, and I never knew of an exception being made in this country to that rule and custom.

Mr. Christie said he would not give them up to me unless he had to. I told him I should apply to the court for instructions as to what should be done. He had the subpoenas that I had issued for the subpoenaing of these witnesses. He at first refused to give the subpoenas back to me. I told him they were my property; that they had been returned to me by the officers serving them, and those officers would expect that I would hold them as my vouchers if I did not deliver them back to them. After some words I got the subpoenas.

Judge J. F. Baruard was then holding the circuit court and court of oyer and terminer. A few minutes after my conversation with Mr. Christie, the foreman of the grand jury came into court, presented their indictments, and informed the court they had no further business. I then stated to the court, in the presence of the grand jury, that such grand jury refused to give me the evidence taken before them; that they had destroyed a portion of it, as they had informed me, and were going to destroy and threatened to destroy the balance.



I will here say that Mr. Christie informed me that they were going to destroy the evidence before they went into the court-room.

I then took the section of the law relating to grand juries, and Judge Barnard said he would read them the provisions of the law applicable to this question, but that he had no power to compel the grand jury to give me the minutes.

He then read them the section of the law, as follows:

"The revised statute provides that every grand jury may appoint one of their number to be a clerk thereof, to preserve minutes of their proceedings and of the evidence given before them, which minutes shall be delivered to the district attorney of the county, when so directed by the grand jury."

After he had read them the law, I objected to his discharging them until they should act upon the question, and determine whether the clerk of the grand jury or myself should have the custody of the minutes. He said to them: "Gentlemen, you may just as well meet this issue now. You had better retire to your room and dispose of this matter or question. Before you go I will again read to you the law;" and he again read over to them the section above stated.

The grand jury went down to the room, were gone about five minutes, returned into the court-room, and informed the court that they had voted or agreed to destroy the minutes, and they had destroyed them.

The court then discharged the grand jury.

I stated to the foreman and the court, both, that all I asked was that they should either allow the clerk of the grand jury or myself to keep the minutes, so that they might be found afterwards if they were wanted; and I further stated that the statute required them to be preserved and not destroyed.

Those minutes I never saw afterward, and supposed they were destroyed as stated by the foreman of the grand jury.

(This court was held in the city of Newburg, October 23, 1868, after the registration had commenced, and before the election, and after the holding of the county court referred to, at which such large naturalization was had.)

The naturalization established by the foregoing evidence was in the interest of the contestee. It further appears from the evidence of Joseph Crawford, a witness offered by the contestee, that a clerk, who was engaged in the naturalization business just before the election of 1868, proposed to furnish witness eight hundred or one thousand naturalization papers at a discount, provided they were for democrats. See his testimony, pages 158 and 169, as follows:

Question. Where did they get their papers; at which place?—Answer. I can't tell which court they got them in.

Q. In which of these places did they receive their papers, in Center street or the corner of Chambers and Center streets?—A. I don't know where they got them; they got them themselves.

Q. Did you not see naturalization papers handed these men in one or the other of the places mentioned by you?—A. I did not.

Q. Did you say to James Fitzgibbons that he could go up town on business, if he wanted to that day, and that his papers would be got for him?—A. Not to my recollection.

Q. What part did you take in assisting these men to get their papers, any other than what you have stated?—A. I came down here to Goshen, on the 19th of October, with ten men, to help to get them their papers. I went up, and the court-room looked to me like a democratic machine. I worked some time to get these men through. Mr. L. Clark was in the court-room; he was getting up the papers for all that were in the room who were democrats; stood there with them in his hand at the clerk's desk, behind the clerks, and I waited for a long time to get a chance for these men; finally I slipped the papers to one of the constable's hands—don't know his name—acting there; he put them on the clerk's desk, and after a while I got them through. I then came down stairs; I found George Millsbaugh sitting at this table in this room; he had a lot of papers before him. I then went to the sheriff's room—little room on other side; found them making out papers there. I went to New York, as before stated, and went into this place at the corner of Center and Chambers streets. I found I was in the wrong place. I then went to Center street democratic headquarters; there I found men who took charge of these men that I took down, or went down with me, and put them through. I also saw the clerk of the court; he offered to furnish me eight hundred or one thousand papers at a discount. I told him I lived in the upper part of the city, and he told me to come down in the morning and give him the names, and he would furnish me the papers the next morning, but I did not go. I believe that is all.

Q. How did you get these two papers?—A. Through this democratic clerk of the court.

Q. How do you know he is a democrat?—A. He told me he was, and that he would



not give me one for \$200 for any other purpose than a democrat. I told him I was a democrat.

That witness was offered by contestee, and thereby advertised to be truthful.

The contestee charges that persons were illegally naturalized in the interest of the contestant, and on page 14 of his brief gives the names of the witnesses to establish the fact. It appears from the evidence that some sixteen persons were taken to New York and naturalized, and, it is reasonable to suppose, in the interest of the contestant. Of that number some of them did not vote, as appears from the evidence of James Fitzgibbons, page 32, relating that he was one of the sixteen, and voted the democratic ticket. Patrick Tyrell, page 19, obtained papers, but did not vote. Two papers were, in addition, brought from New York by Young or Crawford. The contestee states in his brief that, in addition to these above named, one Anthony Gallani voted on bogus naturalization papers, but in looking to his evidence, as cited by contestee, he denies to have been one of the sixteen taken to New York, and was entitled to his papers if the proceedings had been regular. Contestee, at same page, cites Heman Lewis as an illegal voter, when the proof fully shows he was legally naturalized, and had all the other qualifications of a voter, (see his testimony, pages 164 and 165.) Contestee states on page 18 of his brief that Augustus Klemans, John D. Van Vooris, George Lipp, John Ryners, John L. Lobin, William Hall, John J. Basem, jr., Clodius Burard, Edward Mackey, John P. Dubois, and Thomas Rice voted without being entitled thereto, and cites to prove the same the testimony of William Avery, pages 220, 221, and 222. On examination of the same we find no proof to show that Van Vooris was not entitled to vote; but the proof shows that Klemans was not entitled to vote. Same witness swears that George Lipp was entitled to vote, as he was a soldier, and that John Ryners was not a voter in the place he voted, and that John L. Lobin was not a voter, and that said William Hall voted the democratic ticket; also, witness proves that John J. Basem was a clerk at New York; also, that Clodius Burard was not a voter, and that Edward Mackey, John P. Dubois, and Thomas Rice lived at West Point. The cross-examination of the witnesses is not very satisfactory about some of those who, he states, were not entitled to vote, but take it to be true as stated, and it shows that nine out of the eleven were not entitled to vote, and one of that number voted the democratic ticket. Contestee states also in his brief, page 18, that David S. Hadley, John F. Miller, John Fritz, Charles H. Van Wyck, Joseph Rodgers, and Robert Barton were not entitled to vote, and voted the republican ticket; and cites, to prove the same, the testimony of Andrew J. Bell, pages 78 and 79 of the rebutting testimony, and evidence of William Jordan, pages 10, 11, and 12, same evidence. The proof is not satisfactory, but tends to show that most of those persons, except General Van Wyck, were in government employment at Washington, and went home to vote, and were duly interrogated at the polls. The proof shows that General Van Wyck voted at the same precinct where he has always voted.

Contestee further states in his brief that the testimony shows that Charles H. Van Wyck, on election day and the morning following, declared that he would have the seat of the sitting member if he was beaten seven hundred; that he would contest the same, and he would get the seat; thus prejudging and presuming that the committee and the House would do whatever he might, for his personal advancement, require of them, whether sustained by the testimony or not. When we



look to the proof, we find that it did not warrant that remarkable statement of contestee. Let the witness speak for himself:

Question. Did I say anything about fraudulent or illegal voting when I spoke to you about contesting the election?—Answer. I think you did.

Q. What did I say?—A. I think your remarks were something like this: "That if we did not beat you by more than nine hundred or ten hundred you would contest the election, as you thought we were going to get more fraudulent votes than that."

Q. Was anything said about the character of these fraudulent votes?—A. I should think not.

The evidence as to the illegal voting of Andrew Schultz, Abram Bowle, Lyman P. Brown, Jacob R. Schultz, Bently King, and Hollock Titus, is not satisfactory, (see the testimony of Robert E. King, pages 227 and 228.) The proof shows that Whitney Wood voted the republican ticket, and was not entitled to vote. The proof also shows, page 177, that Hugh Milliken and Hiram Comfort voted the republican ticket, and they were illegal voters. John Sanders also voted, and was not entitled, (see pages 196 and 197.) William Taylor voted illegally the republican ticket, (see page 200.) Contestee says on page 19 of his brief, that D. F. Tozer voted illegally, but the witness says he don't know whether he voted or not. James Crane also voted the republican ticket and was not a legal voter. The contestee, on page 20 of his brief, gives the names of eight persons who, he says, voted the republican ticket and were not entitled to vote, and cites the testimony of David G. Star, (pages 127, 128, and 129;) but on page 129 witness states that he did not see them vote, nor knows how they did vote. James Ross and Charles Newman voted the republican ticket and were not entitled to vote, (see Patrick O'Conner's deposition, page 15 of the rebutting testimony.) Contestee cites the evidence of Charles C. Dell, to show that two colored men voted who had not the property qualifications required by the laws of New York, but he don't know how they voted. Thus it is plain from the evidence that illegal votes were polled for both contestee and contestant. The next question that presents itself is, for whom did the persons vote who voted upon the illegal naturalization papers, and who were disqualified otherwise, and whether the election inspectors conducted the election in such a manner as to authorize and justify the committee in disregarding the vote of certain wards and districts in said congressional district. If the eight hundred and thirty-five foreigners who were naturalized (as admitted by the contestee) in Orange County, in the year 1868, by the democratic clerk and his democratic deputies, are held to have been unlawful, and they voted in the interest of the party that controlled the convenient machinery for naturalization, it will give the contestant several hundred majority, after deducting all found to be illegal, for him.

In the city of Newburg, First ward, Jesse Merritt, a witness on pages 48, 49, and 50, states that one hundred and ten voted illegally, and that number was only a part, in his opinion, who so voted at said precinct. In looking to his testimony, he proves that Schedule A, page 48, contains one hundred and forty-eight who voted illegally. The names are given, and by looking to Schedule C, pages 135, 136, 137, 138, 139, 140, and 141, seventy-five of these names will be found, which establishes beyond any question that number as being illegal; the witness states that about seventy voted on these papers, and when the list is examined and compared with Schedule C, we find that there were seventy-five, which shows that this witness is quite accurate in his recollection. Also, on page 51, same witness presents a list of thirty-one who voted at said precinct illegally; eight of that number are to be found on Schedule C, which, added to the seventy-five, make eighty-three who voted, illegally,



the democratic ticket; and the same witness testifies that he was well acquainted with the voters of the district, and that his lists contain one hundred and seventy-one who voted, and illegally. John H. Drake, a witness for contestant, begins his evidence on page 39 and concludes on page 44, and corroborates and strengthens the evidence of Merritt in the number of illegal votes cast in said district, and places the number of persons who voted on taking the general oath at one hundred and fifty; but his testimony on that particular point is not so satisfactory as Merritt's, for Merritt swears he was well acquainted with the voters of the district, and that the lists he presented contain the names of those who voted illegally. And the contestee presents no evidence to disprove the fact, and the committee finds that at said district one hundred and forty voted for contestee who were not entitled to vote.

The town of Hamptonburg next claims the attention of the committee, and from the evidence of James H. Jackson, page 61, it appears that the inspectors refused to comply with the law in putting the preliminary oath to those challenged, and from the evidence of Henry Leonard, page 63, they persisted in violating the election law, until one hundred and sixty-two had voted out of a poll of two hundred and seventy-one. Doubtless the democratic inspectors knew that all had voted who would be prohibited by the preliminary oath, and when the one hundred and sixty-two voters applied to vote, they became very much in favor of complying with the law. The testimony is very satisfactory as to the unlawful misconduct of the inspectors, but not so satisfactory as to the number of illegal votes polled; but the best proof places the number at twenty-eight, (see page 63.) The testimony bearing on this district is to be found from page 60 to 65. The conduct of the inspectors at the first district of Goshen was very unbecoming men discharging a public duty, and they were aided and encouraged by those who knew better, and should have endeavored to uphold and sustain the law rather than encourage and advise a violation of the same. David Redfield, a witness, who was an inspector of the election in said district, but who was in a minority and was compelled to submit to a majority, presents a lamentable state of facts, (see his testimony, commencing on page 87.) From his testimony, forty voted on illegal papers for the contestee. As to the partial and unlawful proceedings and illegal voting, he is strengthened and corroborated by the testimony of Jerry Mapes, on pages 78, 79, and 80, and of Henry C. Duryea, on pages 81 and 84; as the witnesses differ as to the number, the committee places the number at ten, the lowest figure.

The proof as to the first district of Newburg will be found on pages 33, 34, 35, and 36. Daniel T. Weed swears that he had resided in the district about thirty-eight years, and knew most of the voters, and that more than nineteen voted on illegal papers the democratic ticket. At the Fourth ward of Newburg, Thomas Booth, a witness, swears on pages 37 and 38 that he had resided in said ward over thirty years, and knew the voters of the same, and that fifty-one or fifty-two voted illegally the democratic ticket, and there is no evidence to rebut the same. At the Second ward of Newburg, Thomas McAlles, on pages 45, 46, and 47, swears that he has lived in said ward fifteen years, and knows the voters, and attended said ward as an inspector, and that fifty voted on illegal papers for the democracy. He swears from a list he had in his possession. No evidence appears to rebut the same. Also at the Third ward of Newburg, on pages 44 and 45, John Corwin, an inspector of registry and election in said ward, had lived in that ward nearly two years, and in the city thirty years; knew most of the voters, and that nine or ten



voted for the democracy on illegal papers. No rebutting evidence appears in the record. Also the first district of New Windsor, on pages 57 and 58, J. De Witt Walsh swears he resided in said district fifty years; that four voted for the democracy on those illegal papers, and these names appear on Schedule C. As to the illegal voting at Chester, (on pages 68 and 69,) William King swears that he has resided in said district twenty-five or thirty years, and knew the voters generally, and that twelve voted, on illegal papers, the democratic ticket. This is corroborated by Masten, Durland, and Foster, on page 69, and by Vail, on page 70. At the second district of Goshen, (or Mape's Corner,) on page 86, John Kavanaugh swears that ten voted the democratic ticket on illegal papers, and gives their names. Also at Highland Mills, town of Mouroe, pages 125 and 126, Samuel R. Weeks, a witness, swears that he has resided there forty-one years, and attended the election in said district as an inspector, and that thirteen voted on illegal papers the democratic ticket. Also at the town of Monroe, district one, on page 126, Robert Ashman swears that he has resided in said district forty years, and attended the election as an inspector, and that there were from twelve to twenty voted on illegal papers; and two deserters—one voted the republican ticket. The committee placed the number at thirteen who voted illegally the democratic ticket. Also at Middletown, in the town of Wallkill, Joseph Crawford, a witness, called by contestee, swears that he and Colonel Young stood behind the inspectors, and that from sixty to seventy persons registered on papers obtained at New York, and that they took a memorandum of the same. Also same witness swears that forty were registered on Orange County papers, making one hundred by the lowest figures. Same witness swears that these persons never went after their papers nor went off their work. (See testimony, pages 161 and 162.) H. B. Young, a witness for contestee, swears, on page 186, that sixty-four voted on the New York papers, and all on the Orange County papers, the democratic ticket. Also at the first district of Cocheton, Sullivan County, Gideon Wales, on page 107, swears that he has lived there since 1852, and that twenty-six voted at that district, and gives their names as per Schedule G; but witness cannot state how they voted. The laws were violated and disregarded by the inspectors of the election. All three of the inspectors were democrats, and one of them not legally appointed. While the proof shows no increase in the population, there was a gain of more than fifty votes in said district for the democracy, and the republicans polled their usual rate, and but one conclusion can be arrived at from the facts in the case, that the twenty-six illegal votes—if not more—voted the democratic ticket. In Lumberland district, Oscar Lambert, on page 116, swears that he has always lived in said district, and that three persons voted illegally the democratic ticket. The inspectors were all democrats, and showed much partiality, and the democrats formed a ring around, so that no one could challenge the voters, and the vote was largely increased for the democracy, while there was no increase in the population, or falling off of the republican vote. Also at Port Jervis, town of Deerpark, third district, G. F. Vinall, a witness, (on page 97,) swears he has resided in said district six years; that Port Jervis is an incorporated village; that six persons voted who were not on the registry, five voting the democratic, one the republican ticket, which, after taking the one republican vote from the five democratic votes, leaves four illegal votes for the democracy. Same witness, on same page, testifies to four more votes polled for the democracy on illegal papers, signed by Jarvis, and particular attention is called to the evidence on page 73, so as to show



the character of the papers signed by Jarvis. Also said evidence, on page 73, discloses further and other naturalization frauds. Thus it will be seen from the foregoing evidence, that at the aforesaid districts the contestee received four hundred and ninety-six illegal votes, as follows:

First ward, Newburg .....	140
Town of Hamptonburg .....	28
First district, Goshen .....	10
First district, Newburg .....	19
Second ward, Newburg .....	50
Third ward, Newburg .....	9
Fourth ward, Newburg .....	50
First district, New Windsor .....	4
Chester .....	12
Second district, Goshen .....	10
Highland Mills .....	13
Town of Monroe, first district .....	13
Middletown, Wallkill .....	100
First district, Cochection .....	26
Lumberland .....	3
Port Jervis .....	9
Total .....	<hr/> 496 <hr/>

By taking the majority of contestee, which was three hundred and twenty-three, from the four hundred and ninety-six illegal votes polled for him, and it gives the contestant a majority of one hundred and seventy-three. The contestee charges that there were illegal votes polled for contestant, which was found to be true. Twenty voted on Poughkeepsie papers, (see the evidence of Wilson, on page 217;) also two on New York papers, and twelve others, (see pages 8 and 9 of this report,) making in the aggregate thirty-four; by taking that number from the one hundred and seventy-three, it leaves a majority for contestant of one hundred and thirty-nine.

But the proof discloses other and further frauds; and it is safe to infer that out of more than eight hundred persons naturalized as aforesaid, within two months preceding an unusually excited contest for President, governor, and members of Congress, to say nothing of the other offices that were to be filled, that said persons voted, and voted for contestee. And while it is true that the proof shows that some few persons voted on like illegal papers for the contestant, and some few otherwise illegal votes were polled for him, the proof is overwhelming to show that if none had voted only those entitled to do so by law, the contestant's majority would have been several hundred. While the committee should be slow to throw out the whole vote of a ward or district, nevertheless, if the facts and circumstances show that the inspectors of the registry and election knowingly produced frauds, and violated the election laws, and permitted illegal voting, and the polls can't be purged, the whole vote should be thrown out. Does the proceeding at the First ward of Newburg justify the vote being thrown out? John H. Drake, a witness, testifies on page 39 as follows:

JOHN H. DRAKE sworn for Mr. Van Wyck:

Question. Where did you reside last November?—Answer. In First ward of city of Newburg, and have resided there since 1846, with exception of about six years.

Q. Was you an inspector at last election in First ward?—A. Yes.

Q. Please state all that took place at election on that day?—A. Immediately after



the opening of the polls one of the men offering to vote was challenged. I asked to have the preliminary oath administered to him; the other two inspectors refused to have the preliminary oath put; they put to him what is known, I suppose, as the general oath from the registry law. I objected to that, and sent and got a copy of the election law in which were the oaths, which law and its forms they refused to use, and insisted upon and did use the general oath. There were about forty men challenged one after the other. I requested that the preliminary oath should be put to each of these men; the other two inspectors refused to allow it to be put except in one instance. In this excepted case I went on to examine the voter, following the questions put down in the election law; the other two inspectors informed him that he need not answer the questions, and to pass on, and received his ballots. I then said to the other two inspectors that it would be useless for me to object or to ask to put the preliminary oath to any man challenged if they were going to overrule it, and that we had better settle the question then, and I then asked them that they consent to put the preliminary oath to any man that should be challenged, and they gave me to understand that they would not do it, very plainly. I then told them that I protested against their ruling, and I wanted them to recollect it. The preliminary oath was put once after that, in the afternoon, to a man whose name, I think, was Williams, who testified that he was at work at the coal dock; that his family lived somewhere in Ulster County; I think Rondout. He went a short distance from the polls, and Mr. Wilson, one of the inspectors, called him back, told him he was entitled to a vote; some one furnished him with a roll of tickets, marked as the democratic tickets, and he voted. Immediately after the polls opened, and the 19th voter on the poll-list, a man voted under the name of Bernard Lynch, from South Water street. Quite a long time afterward Bernard Lynch appeared. There was but one Bernard Lynch upon the registry, and on examination it was found that that name had been voted upon. The other two inspectors, however, decided to receive and did receive the vote of Bernard Lynch, No. 2, which was marked on the outside as democratic tickets; I don't know what was inside. I have examined the poll-list and I have been unable to find the name of Bernard Lynch upon it, except the one voting the 19th man. I find the 241st voter upon the poll-list is put down as Thomas Lynch; that the first name had been erased and the word Thomas written over it, and there are traces still upon the poll-list of the first name that had been written there, and it looks to have been the name of Bernard erased. The B is quite distinct. There were two Patrick O'Brians on the check-list, and four under the name of Patrick O'Brian voted; there being but two on the registry. They are numbered on the poll-list as 82, 347, 455, and 518. The clerks never gave me any intimation that the third man voting as Patrick O'Brian was not upon the check-list, and I only discovered it by comparing the check-list with the poll-list. When the fourth Patrick O'Brian came to vote, however, the clerks informed us that the name had been voted on; the other two inspectors, however, decided to receive and did receive the ballots of said Patrick O'Brian, No. 4, to which I then and there objected, and those ballots were marked on the outside democratic. After the polls were closed, we compared the clerk's poll-lists, and finding them to agree, we unlocked the first box, turned the ballots out on the table and found an excess of ballots, I think, to the number of ten over the number put down on the poll-list, and put the ballots back in the box again. The other two inspectors decided that one of them should draw out the surplus ballots; he did draw them out—drew out all the republicans but one or two—and after having drawn them out they were destroyed. I will here state there was no difficulty in telling, from the touch, the difference between the democratic and republican ballots. After the destruction of these ballots the remaining ballots were counted, and after counting them the result was publicly declared. The second box was then turned out, containing the State ticket, and I think the excess of ballots in that box over and above the number on the poll-list was eight or ten—I think ten. They were all put back in the box; the other two inspectors decided that one of them should draw out the surplus ballots. They drew out all the ballots in excess—all republican except one or two—and destroyed them. After that, the remaining ballots were counted. After they were counted the result was publicly declared. The third box was then turned up, containing assembly ballots, and when we came to count over those ballots we found we had ten more there than the poll-list called for. We then concluded to go back and re-examine the poll-list, and we found that both clerks had made a mistake of ten votes in adding. We had torn up the surplus ballots and had taken no account of them. We then consulted as to what was best to do, and after a consultation the other two decided to add to the count so many of each kind of ballot, the whole number equal to the surplus. I objected, to all this on the ground that the result had been publicly declared and the ballots destroyed. They then added on the amount they allowed on each side to the several candidates. The two other inspectors were democrats, and I understood and believed both the clerks to be democrats.

Said ward gave a majority of one hundred and thirty-one for contestee. Also, by examining the proof, it will be seen that the inspectors of the elec-



tion refused to put the preliminary oath to persons challenged, and used the general oath, all in direct violation of the statute in such case made and provided.

The inspectors of the election at the town of Hamptonburg acted unlawfully and corruptly.

James H. Jackson testified as follows on the conduct of the election inspectors at said district:

JAMES H. JACKSON sworn for Mr. Van Wyck:

Question. Where do you reside?—Answer. Town of Hamptonburg.

Q. How long have you resided there?—A. Almost twenty-three years; was born there.

Q. Did you attend last presidential election, and in what capacity?—A. Yes, sir; as inspector of election.

Q. Did you also attend at the registration?—A. Yes, sir; as a member of the board.

Q. State what took place at registration at your board.—A. The first day we made out a new registry by copying from the registry the year before.

Q. Were many new names put on the registry last fall?

(Objected to for reason that there is no evidence to show that the registry lists of last fall or the election previous are lost or destroyed; that they are the best evidence of what was done by the inspectors.)

A. Yes, sir; quite a number; from thirty to fifty; probably more.

Q. Were most of these men strangers in your town?—A. A large number were strangers to me.

Q. Do you know the voters in that town generally?—A. A majority of them.

Q. Is it a small, compact, and agricultural town?—A. Yes, sir.

Q. Did you object to any of these men being registered?—A. Yes, sir.

Q. What led you to object?—A. I was led to believe that they had not been in this country long enough, and that they had got their papers from New York without going after them.

Q. Did the men produce and show their papers?—A. Yes, sir.

Q. Were they sworn?—A. No, sir; they would not be sworn.

Q. Did the registrar ask to have them sworn?—A. I asked to have them sworn.

Q. What did the other registrars do?—A. They said I could swear them if I was a mind to. I tried to administer the oath to them; they would not swear, and I told them they could not be registered, and then the other members of the board said their names must be put down on the registry, because these men had their papers, and their names should be and were registered.

Q. Did any of these men make any statements, not under oath, as to how long they had been in this country?—A. I asked one man how long he had been here, and he said four years and two months. It was Matthew Gill.

Q. Was he registered?—A. Yes, sir; and afterward voted.

Q. Who had Oliver P. Coleman's name registered?—A. I don't remember; probably one of the other registrars; Mr. Booth, he had a list of names to put down.

Q. What are the names and politics of the other registrars and inspectors of your board?—A. David H. Booth and John P. Monell, democrats, and myself, a republican. Both of the clerks were democrats.

Q. Did this Coleman vote on election day?—A. Yes.

Q. Was he challenged?—A. Yes, sir, he was, and took the preliminary oath.

Q. What did he say?

(Objected to.)

A. He swore he had been at Elmira long enough to gain a residence there; had voted there, and been in this county about two months. Elmira is in Chenung County. He was told he could vote all above congressmen by David Booth, one of the inspectors. The challenge was withdrawn, and immediately renewed, and he then took the general oath and voted both the State and electoral ticket; part of the State, I suppose; I did not see his ticket at all.

Q. The tickets were folded?—A. Yes.

Q. What ticket did he vote?—A. Democratic; the democratic and republican tickets could easily be distinguished.

Q. Was he challenged by republicans?—A. Yes.

Q. Where did the naturalization papers used in your town purport to be issued?—A. Some were from courts in New York, others from courts in Goshen.

Q. About how many New York papers?—A. From ten to twenty.

Q. About how many Goshen papers?—A. From eight to fifteen, or about there; may be more or less.

Q. Were these men challenged?

(Objected to, for reasons above given.)



A. Yes, sir; quite a number of them.

Q. State what was done in the matter of putting the preliminary oath.—A. When the first naturalized citizen was challenged the chairman of the board, who was a democrat, put the general oath first. I asked why he did not put the preliminary oath. He said that it wasn't necessary, because the challengers were not there to withdraw the challenge. I asked them to put the preliminary oath, and the board refused. The attention of the board was called to the law that the preliminary oath must be put, and they refused in the forenoon to put the preliminary oath. In the afternoon the preliminary oath was put, and I questioned the challenged voters under the preliminary oath, and sometimes they answered, and sometimes evaded the question. They didn't refuse to answer, but the board overruled my questions and wouldn't allow the witnesses to answer. The board overruled the questions "how long have you been in this country," "before what court they got their papers;" and the inspectors overruled the last question, because they said it couldn't be expected that they could remember before what court or officers they got their papers. They continued to put the preliminary oath, but ruled out the questions.

Q. Did one man state where he did get his papers?—A. One man said he got his papers at Goshen; that he picked the papers up on the street one morning.

Q. After this man made this statement was his vote received?—A. Yes, sir; he took the general oath and voted.

Q. Did Patrick Koscorin vote?—A. Yes.

Q. Where did he get his papers?—A. He was challenged on election day, and took preliminary oath, and swore he got his papers in New York October 21, 1868. I asked him if he went himself before the court. He said he made an application for them, and I asked him how long he had been in this country, and this question was overruled.

Q. Was October 21, 1868, the date of the New York papers used at your polls?—A. Yes, sir, the most of them; I think two or three others had other dates. It was near that time.

In that district the contestee's majority was one hundred and five. The action of the inspectors of the election at the first district of Goshen was illegal, partial, and corrupt.

David Redfield, a witness, testified as follows, on pages 26 and 27 :

DAVID REDFIELD SWORN for Mr. Van Wyck :

Question. Where do you reside?—Answer. In Goshen.

Q. How long have you lived there?—A. Over forty years.

Q. Did you attend the election last fall, and in what capacity?—A. Yes; as a republican inspector of election, and was one of the board of registration.

Q. Do you know the voters in your election district, No. 1?—A. Yes, sir; very generally.

Q. Were men who had naturalization papers issued last fall put upon the registry?—A. Yes.

Q. About how many?—A. To the best of my knowledge, about forty.

Q. Did they show their papers?—A. Yes.

Q. Where did their papers purport to be issued?—A. A portion from New York, signed by Charles E. Loew—half, say—and balance from Orange County.

Q. Did these men vote at your poll at the last general election?—A. Yes, with but few exceptions.

Q. What ticket did they vote?—A. I suppose the democratic ticket. I judge from the men who brought them up, the label on the ticket, and kind of paper.

Q. Please tell us what took place, and in its order, as to challenges and alleged illegal voting.—A. In the first place there was a man (Mr. Drake) came up and offered his vote; the vote was objected to on the ground that he was not registered. Mr. Drake's name was upon the poll-list of the year before. We left it off the new one because during the year he had left Goshen and gone to reside in New Jersey. The whole board concurred in that view. He claimed that he had not given up his residence in Goshen. The board determined the act of leaving him off was wrong, and the board concluded to receive the vote, after my protest. The vote was received, but his name was not put on the registry list. His name was not on the registry list. I have the registry list with me. This is not the original list kept at the polls, but a copy compared in the board, which I know to be correct. The list copied from was used in the board. A man came, that I cannot remember his name, with a paper, upon its face regular. I think it was one of the New York papers. He was challenged by Hon. A. S. Murray, upon the ground that he had not been in the country five years. Upon administering the preliminary oath he acknowledged he had been in the country less than five years. His vote was rejected. Hugh McGuire offered to vote; was challenged. The preliminary oath was administered to him; he swore he had never been before any court to receive his papers, and that they had been sent to him. His vote



was rejected. Some one else came up and offered a paper. Mr. Green came up and stated to the board that they had no right to institute this investigation as to the papers; that the person offering the vote should demand and take the general oath, and thereupon the board must receive the vote. Mr. Millsbaugh also made a statement to the same effect to the board. There was a discussion in the board as to the propriety of dispensing with the preliminary oath. I objected to dispensing with it upon grounds we had a right in all cases to put it. The majority of the board overruled me, and decided that in all cases where one came up who was registered, and with papers regular on their face, if he demanded the general oath we must administer it and receive the vote. I protested on grounds that a preliminary oath was required, or might be put, and asked that they record my protest. Subsequent to that, in every case where persons offered to vote, all votes were received without allowing the preliminary oath to be put. In the case of all these newly naturalized voters they were challenged, but the preliminary oath was not allowed to be, nor was it, put. I protested generally against this course, but to no effect. After I made the protest the votes were received without the preliminary oath having been put or taken. I told the board several times that I protested to that manner of business.

Q. Was Schedule E presented there that day?—A. There was a paper read, and I think it was Schedule E.

Q. Either on registration or election day did you notice any naturalization papers produced without any date?—A. Yes; one.

Q. Where from?—A. It was from New York.

Q. Do you know Mr. Tompkins, that keeps a hotel at Mapes's corner, at Goshen?—A. Yes.

The testimony of Jesse S. Mapes goes further, to show the illegality of the election in said district.

JESSE S. MAPES SWORN for Mr. Van Wyck:

Question. Where do you reside?—Answer. Village of Goshen, first district.

Q. How long have you resided there?—A. About two years.

Q. Did you attend there at the last presidential election?—A. Yes; during all the day.

Q. In what capacity?—A. Republican challenger.

Q. Had you a challenge list?—A. I had.

Q. Did you keep a record of what took place that day?—A. I did.

Q. Who were the board of inspectors?—A. Benjamin F. Edsall and William C. Little, democrats, and David Redfield, republican.

Q. Please tell us from your recollection, or memorandum, what took place, and the order.—A. Victor M. Drake appeared and offered his vote; was challenged on account of non-residence and not being registered.

(Mr. Mills objects to all evidence about challenges, on the ground that the official record of these challenges must be produced instead of the recollection of the witness.)

Q. Was his name on the registry?—A. It was not.

Q. What was done?—A. The majority of the board, Edson and Little, decided to register him and allow him to vote; I think Mr. Redfield objected; his ballot was taken.

Q. Did you see the ticket he voted?

(Answer objected to.)

A. I did; it had the democratic heading; Mr. Drake is a democrat. John Ford was next challenged, on the ground that he had fraudulent papers. Mr. George W. Millsbaugh told him to take the general oath, and the board received his vote; Mr. Redfield objecting, upon the ground that he was not allowed to have the preliminary oath to be put; Mr. Redfield wanted to put it. Hugh McGuire was next challenged, on the ground that he also had fraudulent papers. Mr. Millsbaugh told him to take the general oath. Mr. Redfield insisted on his taking the preliminary oath. He took the general oath, and then, after some debate, the preliminary oath was administered. He was asked by Mr. Redfield, "Where did you get your papers?" His answer was, "I got my first papers in New York." "Where did you get your second papers?" "I got them here?" "Did you apply to the court in person for them?" "No; they were brought to me on the railroad." His vote was rejected. Edward Kam's vote was next challenged, on the ground of fraudulent papers. The board decided to put the preliminary oath. He was asked by Mr. Redfield, "Where did you get your papers?" Answered, "I got them here." "Did you apply to the court in person for them?" "No; they were brought to me." Mr. Millsbaugh then arose and made a speech in a loud voice; said he was there to protect these Irishmen from Union Leagues; that this was no inquisition; we could go before the grand jury if we wanted to; and produced and read from a printed circular, purporting to be the opinion of the attorney general, that no board had any right to put any oath but the general oath, if the party should elect that oath. He handed the circular to Mr. Edsall, when he read it aloud, and, after some consulta-



tion with the other democratic member, announced that no more preliminary oaths should be put; that if these men took the responsibility of taking the general oath, the board would take all such votes. The man took the general oath, and the board took his ballots. Mr. Redfield called their attention to the fact that the man admitted under oath he did not apply in person for his papers. John Sauntry was next challenged, upon the grounds of fraudulent papers. Mr. Millspaugh advised him to take the general oath, and told the board to administer the general oath. Mr. Redfield objected, claiming the right to give the preliminary oath, and during the debate that followed, Mr. Redfield asked Sauntry if he applied to the court in person, and he replied, "No, they were brought to me;" and Mr. Millspaugh said, "Don't answer him." The general oath was administered and vote accepted. Mr. Redfield protested. Roger Carrigan was next challenged on the ground of fraudulent papers. Mr. Redfield demanded the preliminary oath; the board refused to put it or allow any questions to be asked him. The vote was taken, and Mr. Redfield protested. James Ryan was next challenged on same ground. The board refused to put preliminary oath or allow any questions to be asked, Mr. Redfield objecting; the vote was taken. Michael Burns was next challenged upon same grounds. The man who employed him, or had a short time previous, told me he had only been three years in the country. No questions were allowed to be asked him. He took general oath, and the board took his vote. Redfield demanded the preliminary oath. Patrick Callahan was next challenged upon same grounds, and same proceedings took place as in the Ryan case. Thomas Kain was next challenged. We had been informed that he had never declared his intentions, and that his father had never been naturalized, or he received a certificate of citizenship. He took the general oath, and his vote was admitted.

Q. Did those men whose names you have given vote the democratic ticket?

(Answer objected to.)

A. To the best of my knowledge they did. I could, by the headings, easily distinguish the difference between republican and democratic tickets.

Q. Is Mr. George W. Millspaugh a leading democrat in that town and this county?—

A. He is.

Q. Is Goshen an incorporated village?—A. It is.

Q. Did men vote in that district last fall who got' naturalization papers at Goshen or Newberg?—A. I presume they did.

Q. Were there other new voters at that time besides those you have mentioned?—

A. I believe there were.

(Paper shown witness.)

Q. Is this paper the circular Mr. Millspaugh read?—A. I believe it is.

(Introduced, marked schedule E.)

The majority for contestee in that district was one hundred and twenty-nine.

The majority for contestee in the three last mentioned districts, to wit: First ward, Newburg, town of Hamptonburg, and first district Goshen, was three hundred and sixty-five. The committee is of opinion that the irregularities and misconduct of the inspectors of the election at said districts were sufficient to throw out the entire vote of said districts, but does not recommend the same, as the contestant did not specifically demand the same in his notice to contestee. In all of said precincts actual fraudulent voting was proven; misconduct, illegality, and partiality of inspectors, all go to prove that the allegations of contestant were true that a conspiracy was formed to issue naturalization papers, and to prevent a judicial investigation of the frauds and to prevent an investigation of the many wrongs perpetrated by the friends of contestee. Therefore, the committee recommends the adoption of the following resolutions:

*Resolved*, That the Hon. George W. Greene is not entitled to a seat as a representative in the forty-first Congress from the eleventh district of the State of New York.

*Resolved*, That the Hon. Charles H. Van Wyck is entitled to his seat as a representative in the forty-first Congress from the eleventh district of the State of New York.



## MINORITY REPORT.

Mr. Burr, from the Committee of Elections, presented the following views of the minority.

The report of the majority of the committee is erroneous both in its conclusions of fact and its application of law. Its statement of facts is based on a partial investigation of one side only. The unsupported guess or supposition of one witness is accepted as establishing a fact, notwithstanding a fair cross-examination of the same witness may show him to be without personal knowledge in the premises, and notwithstanding his guess or supposition may be directly contradicted by numerous witnesses on the other side, testifying of facts within their own knowledge. With this general statement let us consider the testimony on the several points on which the majority base their report.

Of these the first is the charge of fraudulent naturalization. It was boldly charged by contestant in his brief that a conspiracy existed throughout the State of New York to secure thousands of votes to the democratic party by fraudulent papers to persons not legally entitled to them; and that this conspiracy, with the attorney general of the State at its head, was developed in the congressional district composed of Orange and Sullivan Counties, and that by its procurement about eight hundred illegal votes were polled for parties not entitled to naturalization. But the testimony of Lewis Cuddeback, (pages 188-'9,) and of A. K. Chandler, (page 233,) shows that at least one-third of this number came from counties outside of the district in question, leaving, in round numbers, five hundred and fifty as the naturalization of the district for the year. Admitting this to be in excess of the vote of former naturalization, is it not within the knowledge of all that throughout the Union there was an excess of the numbers naturalized over any former year since 1860? The reason is plain. The sitting member, in his brief, furnishes that reason in the following language, quoted from his brief:

From the year 1860 up to the year 1868 naturalization in the eleventh district, as elsewhere, almost ceased. The war being still going on at the presidential election in 1864, those entitled to certificates of naturalization not only refrained from taking them, but concealed the fact that they had ever declared any intentions. And 1868 was the first presidential election had since the war ceased, and the reserve of eight years was brought out in 1868.

But the fact stands out clear as testimony can make it, that the men so branded wholesale as wrongfully holding papers were, with very few exceptions, entitled to certificates of naturalization. A "conspiracy" to secure certificates for those legally entitled to them would be senseless, and is not charged. On the contrary, the theory of the contestant is, that it was a conspiracy to procure certificates for parties *not* legally entitled; and to show that they were not entitled, contestant commenced the examination of these newly naturalized citizens, (pages 22-30,) and after being questioned, twenty-six of them developed the fact that each one of them was legally entitled to papers. At this point he dismissed the remainder, some of whom were afterward examined by contestee, and all were shown to be legally entitled to naturalization papers.

But it is further urged that all the certificates issued in this district were void for want of conformity to law in the mode of procedure by the officers issuing them. It is charged that they were granted and issued irregularly; some while the judge was not present; some in a jury room near the court-room, and that many were signed by special deputy clerks, appointed by the regular clerk without authority of law. It can



hardly be questioned that the county court of Orange County was competent in law to issue certificates of naturalization. In its organization it fulfills all the legal requirements to give it jurisdiction over the subject of naturalizations. It is a court of record; has a clerk, and a seal, and has common law jurisdiction. This court, with others of similar grade throughout the State of New York, has been accustomed, from its first organization, under whomsoever might for the time being preside over it, to examine applicants and grant certificates of naturalization. But it may be said "it is not the power but the abuse of it against which we complain." Let us then consider the irregularities charged in its proceedings; keeping in mind the legal proposition that all officers of the law are to be presumed to have acted properly until the contrary is proven; and as a result that each particular certificate issued by a court of competent jurisdiction must be presumed, if regular in form, and duly tested, to be truthful in statement until it shall have been successfully impeached. The first irregularity, as charged, is that certificates of naturalization were issued by the clerks in absence of the court; and, second, certificates were signed and sealed by "special deputies," appointed by the clerk without due authority.

In answer to the first objection, it might be suggested that it does not come with good grace from those who have, in earlier days and when the court was differently constituted, sanctioned the practice now under review, to make the first complaints. But as to facts: This court is composed of three judges who conduct its business. It has a clerk, (Lewis Cuddeback,) and a regular deputy, (Charles G. Elliott.) The authority of these two to sign and seal such certificates in proper cases, is not, as we understand, challenged by any one. Before considering, then, the rights of special deputies to so certify, let us dispose of a great portion of the question under discussion by referring to the testimony of the clerk, Cuddeback, on page 189, printed record :

Q. At the court held in Goshen in October last, were there naturalization certificates granted or signed to any person or persons by any person beside yourself, or by your regular deputy, Charles G. Elliott?

(This question objected to.)

A. There were none signed by any one except myself and him.

Q. Did you grant any certificate of naturalization, at the court held at Goshen in October last, to any applicant until he and his witness had taken the oaths required by law to entitle him to such certificate?

(Objected to.)

A. I did not.

As all the certificates bearing on this question and issued in this district were issued at Newburg and Goshen, the above testimony settles the question of special deputies as to Goshen, and it only remains to investigate the case in reference to Newburg.

At the court, when held here, the clerk was assisted by W. J. Dickson, regularly appointed and sworn as a deputy, in February, 1868. Still, the clerical force being insufficient, under sanction of the courts, Mr. Dimmick was appointed. Afterward Dickson and Dimmick left on business, and Mr. Millspaugh and Mr. Shaw were appointed. Each of these deputies was appointed in writing, and oath filed with clerk, and each was sworn to the due performance of his duties. Each of them did sign certificates of naturalization, but we need not investigate their right to do so, inasmuch as at all the districts these certificates, when presented, were either refused by the board of registry, or challenged before, and rejected by, the board of inspectors sitting as judges of elections. We have been unable to find a single instance where the holder of a certificate of naturalization, issued by one of these special deputies,



was permitted to vote. Henry C. Millspaugh, one of these deputies, a resident of Newburg, who attended the polls all day, was placed on the stand as a witness by Mr. Van Wyck, and when questioned, answered as follows:

Q. How many papers did you sign?—A. Forty-two.

Q. Were they granted to any persons unless they took the oath required by law?—A. No, sir.

Q. Were there any papers granted to any persons that were not entitled to have them?—A. Not to my knowledge.

Q. Were the affidavits or oaths they took read over to the parties before and when they were sworn?—A. Yes, sir.

Q. Do you know of any person voting upon the papers made out by you?—A. No, sir.

The same statement is certified by several other witnesses as to other polls.

We next consider the charge of issuing papers when not in the presence of the court. On one occasion it is stated that "while naturalization was going on, and near dinner time, Judge George took his hat saying, 'Consider me present, I will be back soon,' and was gone some time, during which the court proceeded just as though he were present." Suppose that to be true; his associates constituted a quorum, and the court was actually and legally in session. The right of the majority of a court to act can no more be questioned than can the right of the majority of a committee of this House, except it be shown that the law creating such court required the presence of all, and entire unanimity in its proceedings. It is charged further that on one occasion certificates were issued by the duly authorized clerk, in a jury-room of the courthouse and not in the presence of the court. The explanation to this perverted statement is, that the citizens of Newburg, on one occasion, requested of the court leave to use the court-room for a railroad meeting; yielding to that request, the court adjourned to meet in the evening in the jury-room, and *did so meet*, and during the whole evening a majority of the members of the court were present with the regular clerk. This is well settled by the testimony of W. J. Dickson already cited.

In determining the right to a seat here, we will, therefore, consider only the questions involved so far as relates to the majority, whichever way it may be, of votes which cannot be questioned. We understand, however, that the majority of the committee, while not directly declaring, do intimate that the whole naturalization of the fall of 1868 is fraudulent and void. They assume the illegality of the whole naturalization, and then assume that all holding certificates, of whatever character, voted; and last of all, assume that all such naturalized parties voted for the contestee; and on these three successive violent assumptions they conclude that Mr. Van Wyck was elected. Here is their strongest *proof* contained in their report, from which we quote in their own language:

It is safe to infer that out of more than eight hundred persons naturalized as aforesaid, within two months of an unusually excited contest for President, governor, and members of Congress, to say nothing of the other offices that were to be filled, that said persons voted, and voted for contestee.

It is fair to "infer" that said persons voted and voted for contestee, say the majority of the committee. Is a seat in Congress to be disposed of on an *inference*? We had supposed that something in the nature of *proof* was required to annul a certificate issued by State authority, expressing the wish of the people of a given district; but the majority of the Committee of Elections stand in the position, by their report, of ask-



ing this House to charge eight hundred illegal votes to contestee on a mere inference of their own, entirely outside of, and unsupported by, the proofs in the case! Would they ask this House to "infer" such condition of facts if they could show proof and thereby convince? With the remark that all votes should be regarded as legal until otherwise sufficiently proven, we pass from the "eight hundred persons naturalized as aforesaid" to consider objections raised to whole returns of towns and districts, as also to individual votes.

We are first called upon to consider objections to the returns from the First ward of the city of Newburg. Against the legality of the election in this ward it is urged that the inspectors failed and refused to administer the "preliminary oath," but that they administered the "general oath" in all cases of challenge. To prove this reference is made to the testimony of John H. Drake, Jesse Merrit, and J. C. Barr. The cross-examination of each of these reduces his testimony to the grade of mere hearsay, and against all their statements affecting this poll we place the testimony of Patrick Brennan, page 206; J. R. Dickson, 207; Nicholas Wilson, 217; and a republican, named D. H. Merritt, 214. If human testimony can establish anything, we submit that the testimony of these men fully establishes the fairness and legality of the election in this ward.

In Hamptonburg, every foreign-born voter showed his certificate of naturalization before being registered. The only complaint of papers urged here in connection with that poll is against those issued at Newburg; but inasmuch as the witnesses for Mr. Van Wyck all admit (see Jackson, 62) that all the papers presented or used there were signed by either clerk or his regular deputy, and that none offered to register or vote on papers signed by any special deputy, we submit that there is no legal objection to any such papers, or to those voting on them.

The Second ward of Newburg is assaulted on the testimony of McAllis, who tells of illegal registration, as he judged, and the men he thought illegally registered are, by the majority of the committee, charged to Mr. Greene as so many illegal votes cast for him, whereas the cross-examination of this same witness shows no illegal votes. We quote from his cross-examination, (page 47,) as follows:

Q. About how many were registered on papers granted last fall, on the first day?—A. I should think about fifty. There were more registered the first day than in all the other days put together.

Q. You didn't, after the first day, register any one who presented papers without examination, and not then, unless his examination showed him to be entitled to registry?—A. No, not unless the papers signed by Dickson were illegal.

Q. Did you, even though the paper was signed by Dickson, if his examination showed him not legally entitled to his papers?—A. No.

Q. Were all the men who were registered on papers last fall challenged?—A. I think they were.

Q. The preliminary and general oath both administered when there was any question about legality?—A. I think it was.

Q. Did you permit anybody to vote whose examination showed either that he was not entitled to his papers or that he was not entitled to vote?—A. I did; there was one man, Cornelius Keeler; that is all I remember in my ward.

The judges of election in this ward were republicans, as shown in his testimony. Both the preliminary and general oath were put; only one man deemed illegal by that board voted, and for whom is not stated. Yet the committee ask the House to throw out fifty votes from Mr. Greene on the mere fact so many registered and were afterward refused a vote on the mere ground that they were "naturalized last fall at Newburg." The only theory by which we can avoid the conclusion that the majority are blindly seeking to accomplish a coveted result in this case,



regardless of law and fact, is, that they have never read the testimony, but have chosen to adopt as true, without investigation, the points made in contestant's brief.

In the Third ward of Newburg, the majority say it is proven by John Corwin that "nine or ten voted for the democracy on illegal papers." Corwin says no such thing. He says nine or ten voted "who got naturalization papers last fall." In his cross-examination he says the board rejected papers signed by the special deputies, but accepted those issued by the clerk and his regular deputy. The board in this ward were republicans, and whether they were right or wrong in rejecting papers issued by "special deputies," there is certainly no *legal* reason against their acceptance of others in regular form and regularly issued.

The majority say as to Fourth ward of Newburg, that Thomas H. Booth swears that "fifty-one or fifty-two voted illegally the democratic ticket," and adds, "there is no evidence to rebut the same." Taken together, the full testimony of this witness needs no rebuttal. He says only that fifty-one or fifty-two voted on papers procured last fall at Newburg; and in speaking of their being challenged he answers questions on cross-examination, (page 38,) as follows:

Question. Have you any paper on which you took down the sworn statement of any or either of these men?—Answer. Yes.

Q. Can you produce it?—A. Yes; I have a memorandum of the affidavits taken at the time by the clerk, Mr. Ball, in the presence of the board and the person swearing; Timothy Ryan swore he was fifty-three years old; been in the country ten or twelve years; declared intention to become a citizen four years ago and got his papers two years ago. James Welsh got papers two years last January. William Degan, forty-six years old; six years in this country, got first papers in October, 1866. William Karboy, six years in this country; got all papers last court; don't know if he was under eighteen years of age when he came. Patrick Norton, about thirty-five years old; came here about thirteen years ago; got first papers before first draft; got last papers this fall. William J. Blake, born 1842; been in country since 1860. John Quigley, forty years old; sixteen years in country; got papers six years ago. August W. Fisher came to this country when fifteen years old. Pat. Keelan, sixty years old, naturalized; two years between first and last papers. Daniel Ryan swore fifty-five years of age; been in country since June, 1853; declared intention March, 1866. Lewis Parapart did not vote. Thomas Ryan swore he lacked five months of being eighteen years of age when he came to this country. I don't see that Edward Ryan was challenged. Lawrence Garrigan, naturalized; forty-six years old; been in country twenty years; got first paper over four years ago. I don't see that Edward Coonan, Bryan Fitzpatrick, or Cavanaugh, were challenged.

Q. These papers from which you are testifying are the same that were made at the time and read and approved by inspectors as correct?—A. Yes.

Q. They contain the names of all persons sworn or challenged?—A. Yes; and I have no doubt of the correctness of the statement, and I have given a correct minute of the testimony taken.

This testimony shows that when the witness is brought to the record made by himself, only thirteen were challenged, of whom one did not vote at all, and we submit that the statements of the twelve who voted, as shown in the record presented by the witness, show that all were entitled to vote, with the possible exception of William Karboy. Admitting his vote illegal, and the list of illegal votes charged by the majority dwindles from fifty-one to *one* by their own witness. We have only to add that at the polls in this ward two of the three inspectors (judges) were republicans, as were also two of the three clerks, and we are through with that ward.

As to New Windsor, the witness (Walsh) says that all newly-naturalized voters were challenged, and none allowed to vote unless their examination under oath showed them clearly entitled. He shows that the four votes proposed by the majority to be thrown out were never cast at all. He is the witness cited by the majority to sustain their



proposition. We can only conclude that they did not read his cross-examination at all.

The only objection urged to the Chester poll is that twelve men voted there who "got their papers last fall." It is not proven that there were more than three such votes; but the number is not material unless illegality be shown. It is not proven how these men voted.

At Mapes's Corner, according to the testimony of Kavanaugh, (page 86,) seven men illegally got papers, and perhaps that is true. But he cannot say they voted, or how. He says, in answer to the question, "Did these men vote?" "I suppose they did." We submit, as he was neither an inspector nor challenger, and does not even say that he was at the polls at all, such testimony should be received with great caution. If these men *did* vote, the fact is susceptible of better proof than this. The indecent and uncalled-for profanity marking his testimony would readily excuse decent men from scanning it any further.

In Highland Mills, town of Monroe, the majority throw out thirteen as voting on "illegal papers." Of these men only two had been registered on any papers, and the witness to whom the majority refer (Weeks, pages 125-'6) says the remaining eleven were not on the registry, but "proved themselves entitled to suffrage by the production of their papers and the oath of a householder resident of the district on election day," which is in exact accordance with the laws of New York relating to voters omitted from the registry. The majority of the election board at this town was republican.

In the town of Monroe, district one, the majority charge Mr. Greene with thirteen illegal. This is a repetition of the case of persons "naturalized last fall." They were examined by a republican board of election officers, proved title to the franchise by their oaths respectively, as also by a householder, and having satisfied the republican board of their right, did vote.

In Chester the majority claim to throw out twelve votes for Greene on same grounds as above.

At Middletown, in the town of Wallkill, the majority propose to throw out one hundred democratic votes on the testimony of Crawford and Young. An examination of Crawford's testimony will show that his statements about voting are mere hearsay. He *knows* nothing about it. He says that some sixty or seventy names were on the registry as having papers from New York, and he inquired of others and could not find out that such men had been to New York at all. Hearsay again. If it were true that men holding such papers had not been in person to the points where they were issued, why did not the contestant produce witnesses knowing the fact themselves, and not depend on a partisan friend to gather up the hearsay of a town and parade it as a reason for disfranchising sixty or seventy voters? The record convicts this same Crawford, who was a member of the republican committee on naturalization in Wallkill, of having knowingly aided in procuring fraudulent papers for republicans, of which more hereafter. Young's testimony adds forty to the list of naturalized voters—that number, he thinks, having presented Orange County papers. On cross-examination witness says when men were challenged they took both oaths, and can only assert with certainty to himself three illegal democratic votes, and admits that there was some illegal voting done by republicans, but does not know the number.

From the polls at the first district of Cohecton, contestant seeks to throw out twenty-six votes as having illegally voted for Mr. Greene, and the majority of the committee yield to his request. Witnesses swear



that twenty-six voted, as shown by the list, whom they did not know. For instance, they say the list copied for them by the radical clerk shows a man to have voted named Willer; another, Farker; another, Kain, &c. By looking at testimony of S. T. Pendell (page 13, additional record) it will be seen an examination of the original poll-lists shows, by order and number of names on the copy, Willer should have been Miller, Farker was written by the ignoramus instead of Parker, and he very conscientiously transformed Rain into Kain, preparatory to making a list of twenty-six illegal voters. Every name of the whole number is shown by Pendell and John Baring, (page 21, additional testimony;) all were legal voters. Some were democrats and some republicans, yet you are urged to throw out just twenty-six votes from Greene's list on the mere inference that an error *might* have existed to that extent. We hardly know which is most surprising, the skill of the clerk, Ward, in preparing this list of twenty-six names, or the readiness with which the majority of the committee have been led to indorse his bad spelling and worse conduct. Still another charge is made against this poll with the intention of throwing out the entire vote. A witness was produced by contestant to prove a conversation between himself and one of the inspectors, Peter Theis, wherein he says Theis claimed to have changed numbers of tickets while receiving them from voters and putting them in the boxes. The witness says he did not believe this at the time. We append the testimony of Theis himself, which, we suppose, was never read by the majority, else they certainly would not propose, on such trivial suggestion, to disfranchise the voters of an entire town.

PETER THEIS sworn for Mr. Greene :

(Objected to by contestant for reasons heretofore stated.)

Question. Do you live in the town of Cochection?—Answer. Yes, sir.

Q. Were you inspector of election there at the last general election?—A. Yes, sir.

Q. Do you know Colonel Rockwell Tyler?—A. Yes, sir; I know the man by that name.

Q. You know him to be a republican?—A. Yes, sir.

Q. Did you ever state to him, or to any one in his presence, that you had changed any ballots, and substituted others in their places, that were voted or offered at that election in your district?—A. No, sir.

Q. Did you ever make any such changes?—A. No, sir.

Q. Do you know of any such having been made?—A. Not to my knowledge.

Q. Did you have, on the day of election, or the day following, a conversation with S. F. Pendell, in which you both were boasting, or speaking in a boasting and jocular manner, of your labors at the election; and if so, state what the conversation was?—A. We were boasting. Mr. Pendell was boasting what work he had done. I guess I asked him for a set of tickets to vote; this was on election day, and after he had handed me the same I told him he might give me all them tickets and I would put them in, and that would save him the trouble. He gave me some; how many I don't know; may be a set or two; I can't tell. I voted out of them one set myself, and that was all the tickets I put in. I don't remember that there was anything more; I can't tell.

Q. You say they were the only tickets you put in, except what other people voted, you acting as inspector.—A. Yes, sir; that was all.

At Port Jervis, Deerpark, the majority of committee charge six votes as illegal, and infer that they voted for Greene. Their own witness, Vinal, admits that one probably voted the republican ticket, and that all the remaining five took both oaths, proved their right, and voted. The sum of their offense was, they held papers issued that fall, and though issued in New York, and bearing the signature of the clerk of a court of record, and the seal of that court, it is "inferred" that they were illegal.

At the first district of Goshen a few names were registered on newly issued papers. Redfield's testimony is relied on by contestant to throw out forty votes as having been illegally given for Mr. Greene. The



claim to that number is based simply on the fact that Redfield says forty men were challenged there that day, and finally voted. Of course he, like others, is ready to *infer* that these men were illegal voters, and that they voted the democratic ticket. He discloses, on cross-examination, that such conclusion is a mere inference; but an analysis of the forty shows that seventeen of them were republicans challenged for minority, betting on elections, &c., and that ten more were negroes, challenged as not being owners of real estate of value of \$250, leaving only thirteen of the forty who may have voted the democratic ticket; and we claim that no one of these thirteen votes is shown to be illegal. We quote from testimony of Hon. G. W. Millspaugh:

Question. You were present at and about the polls on the election day at the last general election in the first district of the town of Goshen?—Answer. I was there the whole of the day, with the exception of about twenty minutes in the afternoon, about 3 o'clock, when I went for a lunch.

Q. Do you know all who were challenged on that day by both parties? and if so, state the number challenged, and any facts connected with the matter of those challenges.—A. I was at the poll almost the whole of the day as a challenger of the democratic party, and saw, perhaps, nine-tenths of the voters who voted in the first election district vote; and voters were challenged, their names were taken upon a paper by one of the clerks of election, and which paper containing the names of the persons challenged is now on file in the town clerk's office of the town of Goshen; the town clerk's office is kept in my office; that list contains the names of about forty who were challenged; I have examined the list upon two occasions and made a copy of it; that is about the number, to my recollection, that was challenged in that district last fall; in that list of challenged voters is the names of ten negro voters who voted at that election; in all those cases the general oath was put to them as required by law; in the list of forty challenged voters I think there are seventeen of them who voted the republican ticket; a great many of them I challenged myself, some for being under age, and some for betting on election, and in each case the preliminary oath was put to them; other men who had been challenged by the opposite party, whose names are contained in this list, were legal voters in the town, to my knowledge, and had been previous to that election. About 3 o'clock in the afternoon, while taking my lunch, I was sent for by the board of inspectors and asked by them whether a man who came here under age, but had not been five years in the country, had a right to vote. I told them he had not. This man's name who had offered to vote, I think, was Daly, I know was Daly, and is the one spoken of by Mr. Redfield in his testimony. Mr. Redfield is mistaken as to the time he offered to vote; I know it was in the afternoon because I was taking my lunch when the board sent for me; in his case the board put the preliminary oath to him; when the voter demanded the preliminary oath it was administered by one of the inspectors in all cases; and when a person offering to vote was challenged, demanded the general oath, it was administered to him by one of the inspectors, instead of the preliminary oath; in some cases the challenger insisted on the preliminary oath, and it was not administered by the inspectors; I should think there was less than ten of these cases; I think from this statement in the clerk's office it was about ten, and that is my recollection of it.

Having now finished the review of charges of wholesale illegal voting, we call attention to a comparison of the votes of this district, so far as we can reach it, from 1860 to 1869. This we do to show that there is no force in the suggestion that the increased vote is indicative of fraud. From statistics we compile as follows:

Year.	Republican.	No. of votes.	Democratic.	No. of votes.
1860.....	Van Wyck.....	8, 311	St. John.....	8, 163
1862.....	Fullerton.....	7, 572	Winfield.....	9, 326
1864.....	Murray.....	9, 736	Winfield.....	9, 976
1866.....	Van Wyck.....	10, 174	Anderson.....	9, 933
1868.....	Van Wyck.....	11, 298	Greene.....	11, 620

From the above lists the increase of votes from 1860 to 1864 (presidential elections) was three thousand two hundred and thirty-eight, while



the increase from 1864 to 1868 (presidential) was three thousand and six. But if comparison be challenged between biennial elections, see vote of Sullivan County, where contestant charges most illegal voting in 1868, and D. G. Starr, an intelligent witness sworn for Mr. Van Wyck, says (page 129) that the democratic increase in that county in 1868, over the vote of 1866, was one hundred and twenty-nine; republican increase in same period was three hundred and twenty-two.

We have not the data to establish a comparison in Orange between the same two years, 1866 and 1868, but a comparison between 1867 in that county, (about which no complaint was made,) and 1868, shows about the same result. If any further explanation of why this increase in Greene's vote over former candidates for Congress on the same ticket, it may be found in the fact that Mr. Van Wyck, from personal unpopularity or other personal cause, ran behind his ticket at a great majority of the polls in the district. In Orange County alone he was two hundred and thirty-two behind General Grant's electors. We append some testimony from republican voters on this subject:

DAIN A. STEVENS sworn for Mr. Greene :

Question. Are you by profession and practice a lawyer ?—Answer. Yes.

Q. Where do you reside ?—A. Third ward, city of Newburg.

Q. Did you vote in that ward at the last general election ?—A. Yes.

Q. Are you a republican ?—A. Yes.

Q. Who did you vote for for member of Congress ?—A. I voted for George W. Greene.

Q. How did you come to vote for him ?—A. Because I thought he was the most proper person, and considered him much the best man of the two.

THOMAS KIMBALL sworn for Mr. Greene :

Question. Where do you reside ?—Answer. Third ward, city of Newburg.

Q. What is your business ?—A. Lumber business.

Q. How long have you been engaged in that business in Newburg ?—A. About seventeen or eighteen years.

Q. You are a republican ?—A. Yes.

Q. Do you know of a republican who had the republican ticket with Mr. Van Wyck's name erased ?—A. Yes.

Q. About how many ?—A. From twenty to twenty-five I know.

Q. Do you know whether or not any such ticket was voted ?—A. Yes, I know of one such ; I voted it myself. I had, in my opinion, good reasons for doing so ; I did not think Mr. Van Wyck to be a worthy representative of republican principles or an honest man.

Cross-examined :

Q. Do know whether any of the twenty or twenty-five tickets you have spoken of was voted with but your exception ?—A. I don't know of it to be a fact, but only of the promise of the parties to vote them.

Q. Can you name the parties you gave them to ?—A. I prefer not to do so at present.

THOMAS KIMBALL.

HENRY M. CONNELLY sworn for Mr. Greene :

Question. You are a lawyer residing in the city of Newburg ?—Answer. Yes, and live in the Third ward.

Q. How long have you resided in the city of Newburg ?—A. About seventeen or eighteen years.

Q. Did you vote at last general election in the Third ward ?—A. I did.

Q. You are a republican and a member of the republican party ?—A. Yes.

Q. Do you know of any republicans in the city of Newburg who voted against Charles H. Van Wyck at last election for congressman ?—A. Yes.

Q. State as near as you can about the number in your ward.—A. I know of between thirty and forty.

Cross-examined :

Q. You were formerly an officer in the Fifty-sixth regiment New York volunteers. Can you name any of the thirty or forty men you speak of ?—A. Yes, I can name some of the thirty or forty.

Q. Will you name them ?—A. Yes, if I am obliged to. I am willing to state anything I done myself, but I don't want to expose any one else.



Q. Do you know, of your own knowledge, that thirty or forty republicans, living in the Third ward, voted against Charles H. Van Wyck as member of Congress at the last general election?—A. I do.

Q. Now will you give us the grounds of your knowledge?—A. At that election I acted as clerk at the polls, and particularly noticed the split republican tickets on congressmen, and there were at least that number of republican tickets with Mr. Van Wyck's name erased, and in the majority of cases the name of Mr. Greene written thereon.

Q. Can you state the majority of the splits for Mr. Greene?—A. About two-thirds of them; I think they were over forty.

Re-direct:

Q. Who was the colonel of the Fifty-sixth regiment when you were in the service?—A. Charles H. Van Wyck.

Q. In what capacity were you in that regiment?—A. I enlisted as second lieutenant.

Q. How long were you in the service?—A. From September, 1861, until 17th March, 1865.

Q. What rank did you hold when discharged?—A. Brevet lieutenant colonel.

Q. On whose staff were you?—A. General Jordan's. I was in Fifty-sixth regiment until October, 1862.

HENRY M. CONNELLY.

ISAAC M. MARTIN sworn for Mr. Greene:

Question. In what ward of the city of Newburg do you reside?—Answer. Third.

Q. How long have you resided in Newburg?—A. All my life, with the exception of seven years.

Q. You are a republican and a member of the republican party?—A. Yes.

Q. Did you vote in the Third ward at the last general election?—A. Yes.

Q. Do you know of any republican who voted in that ward that voted against General Van Wyck at last election for member of Congress?—A. Yes.

Q. Did you vote for him?—A. I voted for George W. Greene for congressman.

Q. Can you state about how many republicans voted against Mr. Van Wyck in the Third ward?—A. I think seventeen.

Q. State, if you have no objections, how you came to vote against General Van Wyck.—A. I would rather not answer.

Cross-examination:

Q. Were you a member of the Fifty-sixth regiment New York volunteers?—A. No.

Q. Can you name the republicans who voted against Mr. Van Wyck in the Third ward?—A. I can, but I don't want to do it.

Q. Do you know, of your own knowledge, that seventeen republicans voted in the Third ward at last general election against Van Wyck for congressman?—A. Yes, sir.

Q. What is the ground of your knowledge?—A. In comparing tickets before voting and fixing tickets for others to vote.

From the foregoing resumé it will appear that if every vote cast for Mr. Greene, and around which any degree of legal doubt has been cast, were deducted from his side, it would not affect his right to a seat, but would only reduce his majority from three hundred and twenty-three down to about two hundred and fifty, leaving him still with clear title to the certificate and the seat. We have proceeded on the theory that except where otherwise shown, courts and election officers are presumed to have acted regularly, and that in approaching the ballot-box to review the votes, each should be regarded as sacred until successfully impeached by competent testimony. We append a list of cases presenting legal questions involved in the case as presented:

New Jersey cases, page 24, Contested Elections; *Botts vs. Jones*, page 74, Contested Elections; *Bennett vs. Chapman*, page 204, Contested Elections; *Whyte vs. Harris*, page 263, Contested Elections; *McHenry vs. Heaman*, page 551, Contested Elections; *Wright vs. Fuller*, page 155, Contested Elections; *Goggin vs. Gilmer*, page 71, Contested Elections; and cases therein cited.

#### THE OTHER SIDE.

Having now, as we think, fairly disposed of the charges against the votes received by Mr. Greene, shall we glance very briefly at the record



of the contestant? Shall we ask whether he comes into this contest with clear record, and seeks admission to this hall with pure hands? Let the record answer. That record shows a systematic plan to secure naturalization of republican foreigners, regardless of right to papers and reckless of the manner of obtaining them. Joseph Crawford, heretofore referred to, and H. B. Young, two active working republicans of the village of Middletown, where contestant then *staid*, were the committee on naturalization for the republican club of the town of Wallkill in 1868; money was provided for the purpose of procuring the naturalization of persons; some persons were through them naturalized by the courts of Orange County; in the month of October, John Hurst, after consulting with and arranging with the committee, Crawford and Young, upon the assurance that all persons whom he would gather together at the railway station in Middletown, on a morning named, should be taken to New York, and should have their naturalization papers obtained for them, did gather some sixteen or seventeen persons, who were, according to promise, taken to New York City—a part by Crawford and a part by Young; the fare of part paid and the naturalization papers for all purchased at \$2 apiece. These men were taken first to the republican headquarters in Chambers street for naturalization, then into the democratic headquarters, then back to the republican headquarters, where they finally had their papers handed them; not having been into court, been sworn, or had any witnesses.

The testimony further shows that these men were brought back, and that some of them voted, and voted the republican ticket; that Mr. Crawford obtained other naturalization certificates, with the seal of the court and the signature, or pretended signature, of the clerk attached; that subsequently two papers of this kind, with the names of Patrick Tyrell and William Southwell, were left at the brewery, in Middletown, of Ogden & Robertson, the latter being an active republican; that Tyrell and Southwell received these papers, and that Southwell voted, and voted the republican ticket, but that Tyrell did not vote.

It further appears that Mr. Hermon B. Young was a challenger at the polls in the village of Middletown, where most of these persons voted, but did not challenge them; that at the time Mr. Young was connected with the internal revenue business of that congressional district.

Mr. Crawford admits he brought from New York two such certificates as were left at the brewery, with the exception that no name was *then* filled in. How many more he brought, or what was done with them, it ought not to be difficult to guess in part.

In addition to the persons above named are Anthony Galbania, of Middletown, who had bogus papers and voted the republican ticket, (pages 162, 163,) and John Watson, of Middletown, who had not been in this country two years. He was one of the sixteen or seventeen taken to New York by Young and Crawford, (pages 163, 164.) Also, Herman Lesser, (pages 164, 165.)

*City of Newburg.*—The testimony of Alexander Darragh, page 215; William J. Dickson, pages 230, 231; Nicholas Wilson, pages 217, 218; Charles M. Ridelick, page 150, &c.; William Jackson, page 226; John Cumberledge, page 229; Robert Leach, page 239, and others, show and establish these facts, viz:

That the county clerk and county judge at Poughkeepsie, in Dutchess County, are republicans; that in the month of October, 1868, just prior to the general election, numerous batches of persons from Newburg City were taken to Poughkeepsie to be naturalized, and did obtain



naturalization certificates and return to the city of Newburg and vote the republican ticket in the November election of 1868.

That they were taken or accompanied there, and the fares and expenses of part of them paid by active leading republican politicians; that their papers, produced on the examination, purported to be issued out of the supreme court, while, in fact, there was no supreme court sitting at Poughkeepsie at the time the certificates purported to be issued.

And further, that all of these several batches of persons were pretended to be naturalized in the county clerk's office at Poughkeepsie, without the presence of any court or judge or jury, and that no applications were filed in the said clerk's office.

That one Thomas R. Glassey, proven not to be a resident of Newburg then, and never in the recollection of the living, swore as a witness for thirty-three persons; this was one batch.

Accompanying George W. Underhill, a prominent republican politician of the city of Newburg, was another batch of sixteen thus pretendedly naturalized. (See the evidence of John Cumberledge, page 229.)

Accompanying Alexander Darragh, another prominent and active republican politician of Newburg City, were seven or eight thus pretendedly naturalized at Poughkeepsie. (See his testimony, pages 215 and 216.)

Accompanying Thomas Ray, another republican, there was a batch thus fraudulently naturalized. (See his testimony on pages 208, 209.) There were various other batches thus fraudulently naturalized at Poughkeepsie, as is shown by the testimony of Nicholas Wilson, (pages 217, 218.) The persons he testifies voted in the First ward of the city of Newburg, and on Poughkeepsie papers, not being included among the names given by the other witnesses.

The testimony of Robert Leach, the foreman of the Washington Iron Works in the city of Newburg, shows that fraudulent naturalization papers were handed to the men in said works by one Jack Lewis, an active republican.

The testimony of Charles M. Redelick (page 150) shows that this same Jack Lewis, on the Friday immediately preceding election, gave to him, Redelick, in an envelope, one of these bogus Poughkeepsie naturalization certificates, and that he, on the following Tuesday, voted on such paper, and voted the republican ticket, he still being an alien,

The testimony of William Jackson (page 226) shows that one of these bogus Poughkeepsie naturalization certificates was left at his house in his absence, and that he voted on that paper, and voted the whole republican ticket.

The testimony of Nicholas Wilson, one of the inspectors of election in the First ward of the city of Newburg, shows (pages 217 and 218) that the following named persons, and some ten or twelve more, voted in that ward at the election in November, 1868, on these bogus Poughkeepsie naturalization certificates and voted the republican ticket, viz: Charles M. Redelick, Henry Bauman, John Guthrie, Morris J. Keenan, John Cumberledge, William Jackson, Richard Gamel, Richard Parrott, sr., Richard Parrott, jr., and Frank Sadler. The testimony of other witnesses discloses the fact that there were persons in every ward in the city who voted on these bogus Poughkeepsie naturalization certificates; so as to leave no doubt but there was a general and systematized business carried on successfully in the Poughkeepsie bogus papers.

The republicans have control of all but the First ward in the city;



detection was, therefore, made more difficult, as well as the actual proof. But sufficient is shown to prove that it existed in each and all the wards of the city, and that wholly and solely in the interest of the republican party.

Illegalities or irregularities on both sides, the sitting member should retain his seat.

Now, as to the proof of those who voted the republican ticket who had not the legal right to vote.

The testimony of William Avery (pages 220, 221, and 222) shows that the following named persons voted, without legal right, the republican ticket, viz:

Augustus Kleemans, John D. Van Vorhies, George Lipp, John Ryners, John L. Lobin, William Hall, John J. Basew, jr., Clodius Birrard, Edward Thackery, John P. Dubois, and Thomas Rise.

And the testimony of Andrew J. Bell (pages 7, 8, and 9 of rebutting testimony) shows, with the testimony of William Jordan, (pages 10, 11, and 12 of rebutting testimony,) that the following persons voted the republican ticket when not legally entitled to vote, viz:

David S. Holley, John F. Miller, John Fritz, Charles H. Van Wyck, Joseph Rodgers, and Robert Barton.

Their testimony further shows, that the contestant, Charles H. Van Wyck, on election day, and the morning following, declared that he would have the seat of the sitting member if he was beaten seven hundred; that he would contest the same, and that he would get the seat; thus prejudging and presuming that the committee and the House would do whatever he might, for his personal advancement, require of them, whether sustained by the testimony or not.

The testimony of Robert E. Ring (pp. 227 and 228) shows that Andrew Schultz, Abram Bowle, Lyman P. Brown, Jacob R. Schultz, Bently King, and Hallock Titus, voted the republican ticket in 1868, without the legal right to vote at all.

The testimony of Alonzo Smith (pp. 155 and 156) shows that Whitney Wood voted the republican ticket, without any legal right to vote at all.

The testimony of Hugh Milliken (p. 162) shows that he voted the republican ticket, without any legal right to vote.

The testimony of William Titus, one of the inspectors of election in the town of Montgomery, shows (p. 177) that Hugh Milliken and Hiram Comfort voted the republican ticket, without any legal right to vote.

The testimony of John Sanders (pp. 196 and 197) shows the same thing with reference to himself, and that on the promise of several active and leading republicans to give him a pair of boots, (which they gave him,) and of protection from the consequences of voting, he voted the republican ticket; and was by the same republicans advised to run away when subpoenaed in this contest as a witness.

The testimony of John Steadworthy (p. 200) shows that William Taylor voted the republican ticket without any legal right to vote.

The testimony of Elmore Earle (pp. 201 and 202) shows the same thing with reference to D. F. Lozier.

The testimony of D. K. Lynch (p. 202) shows the same thing with reference to Benjamin Gray.

The evidence of John Coffey (p. 203) shows the same thing with reference to James Crowe.

The evidence of William H. Uptigrove (pp. 222 and 223) shows the same thing with reference to himself.

The testimony of David G. Starr (pp. 127, 128, 129, and 130) shows that Charles O. Holmes, John Sexton, Maitland Royce, Alfred Under-



hill, Nelson Rowland, Andrew J. Holmes, James Simpson, Nehemiah Lord, and David Holley, voted the republican ticket, having no legal right to vote at the polls where they voted.

The testimony of Patrick Connor (p. 15 of rebutting testimony) shows that James Ross and Charles Newman voted the republican ticket, having no legal right to vote at all.

The evidence of Charles G. Dill (p. 25 rebutting testimony) shows the same thing with reference to James H. Johnson and James Gale, colored voters.

The testimony of many other witnesses, too numerous to mention, shows the same thing in almost every election district in the congressional district.

For proof we refer to, first, the testimony of Joseph Crawford, pp. 157-78, &c.; Herman B. Young, p. 184; John Hurst, p. 168; Edward Southwell, p. 24 sup. tes.; William Southwell, p. —; George Biggs, p. 172; Patrick Tyrell, p. 19 rebut. tes.; John Watson, p. 166; James Fitzgibbons, p. 32 reb. tes.; Thomas Butcher, p. 32 reb. tes.

We allude now to facts disclosed in the record, as to which we feel that the committee and the House should express their disapprobation, however unpleasant such duty. We refer to the corrupt use of money to secure the election of a candidate, that candidate being the contestant in this case. The attempt is shown to have been made in various parts of the district by friends of Mr. Van Wyck to demoralize the voters of the district, and pervert the tone of public sentiment by the direct purchase of votes. Standing offers, in different places, of from \$4 to \$10 per vote, are shown to have been made for votes for Mr. Van Wyck, and supplies for family use, such as flour, boots, hats, coal, &c., were distributed with a lavish hand as the consideration of so many expected votes. On this subject we refer to the following list of witnesses.

James E. Post, page 192; Jesse R. Wood, pages 183, 184; George H. Price, pages 11, 12, rebutting testimony; Ira S. Clawson, pages 3, 4, 5, rebutting testimony; H. A. Wadsworth, pages 198, 199; Patrick Connor, page 15; Everett L. Hulse, page 187; James O'Connor, pages 182, 183; letter of J. F. Bailey, page 240; William D. Hall, pages 225, 226; Grant B. Marvin, page 6 of rebutting testimony; Peter Belcher, pages 192, 193; William H. Kirby, pages 175, 176; Silas H. Case, page 181; John Myers, pages 163, 164; Reuben C. Miller, page 165.

This system of corruption in American politics is becoming too common, and whether by the one or the other political party, will pave the way for utter political demoralization. If persisted in and countenanced by the House, offices will soon be sold as merchandise, and the price received will be the price of American liberty and independence. Without classifying and numbering the legal or illegal votes, we have, as we claim, shown clearly that without charging illegal votes to the contestant we are justified in the conclusion that Mr. Greene justly and legally holds his seat as the representative of the district in question. Consider the illegal votes on papers fraudulently procured by the friends of Van Wyck, from New York and Poughkeepsie, and we submit that the majority returned for Mr. Greene is very materially increased. We therefore offer to the House the following:

*Resolved*, That Hon. George W. Greene was legally elected to the forty-first Congress, and properly holds his seat as representative from the eleventh congressional district of New York.

ALBERT G. BURR.  
SAM'L J. RANDALL.  
P. M. DOX.



## JOHN R. READING.

There were allegations of illegal and fraudulent voting.

United States soldiers' voted in a certain precinct; the law of Pennsylvania requiring that a person shall only vote at his actual residence: Held that the soldiers' vote should be rejected, except in cases where said soldiers resided in the precinct at the time of enlistment, or remained for years after.

The report was sustained, yeas 114; nays 45.

March 29, 1870.—Mr. Cessna, from the Special Committee of Elections, consisting of Messrs. Cessna, Randall, and Hale, made the following report:

*To the honorable the House of Representatives of the Congress of the United States:*

In the matter of the contested seat of John R. Reading, from the fifth congressional district of Pennsylvania.

The Sub-committee of Elections, to whom, by virtue of the recent action of the House this case was referred, would respectfully report that they have carefully examined the evidence and arguments of the parties to this controversy and find the following to be the facts: At the election held October 13, 1868, in said district, the general returns show that John R. Reading, the incumbent, was returned as having received 13,199 votes, and the contestant, Caleb N. Taylor, 13,158 votes, leaving an apparent majority of 41 votes for the incumbent, besides which the contestant in his notice of contest (seventh specification) frankly admits that in the return from the third division of the Twenty-third ward 60 votes are returned for him which he did not receive, the true vote of the precinct being for contestant 209 votes, but returned 269, and this makes the actual majority for incumbent 101 votes. To this apparent majority, in the judgment of the committee, there should be added as follows, to wit: 23 votes made up as follows: 18 charged by incumbent and admitted by contestant; two others, Lewis Leisler and Jacob Moyer, found to be illegal by the committee; one vote not counted for incumbent by the election officers in Bristol, by reason of the misplacement of the sticker containing the name, and two tickets which were folded together, in Falls Township, counted for the contestant, but rejected by the committee. For this entire list of 23, together with the names of the witnesses, the pages containing the evidence and the causes of legality, see Statement C, hereto attached. This would make the majority for the incumbent 124. He is, however, entitled to an additional credit of 13 votes on account of that number of persons who offered to vote for him and whose ballots were, in the opinion of the committee, improperly rejected. This increases his majority to 137. (See Statement D, hereto attached.) Incumbent claims 1 additional vote in the eighth division, Twenty-second ward. On a careful examination of the general return, the hourly return, and the tally-list, the committee allows this credit, making his majority 138. He also claims a credit of 11 votes in the third division of the Twenty-fifth ward. The general return in this case gives contestant 231 votes; the hourly return agrees with the general return; the tally-list, however, shows but 220 votes for contestant. No proof whatever is produced in this case except a copy of the tally-list from the prothonotary. This same list shows but 223 votes for the incumbent, while the general return gives to him 228 votes. This would give a loss to contestant of 11 votes, and a loss to incumbent of 5 votes, being a net gain for the latter of 6 votes. To



allow this credit requires us to go behind the return. The incumbent having asked this at our hands should have called the officers of the election and shown the list of voters, or, at least, the aggregate thereof, or asked for a recount of the ballots. Nothing of this kind has been requested. On examining the tally-list of the seventh division, Twenty-third ward, we find an error of 6 against the contestant, or rather a difference of 6 between the tally-list and the returns from this precinct. We have, therefore, concluded to stand by the return in each case, especially as the correction of both would make no difference to either party.

The committee has allowed to the incumbent all that he claims thus far except the vote of one person improperly rejected, as he thinks. He claimed in all 14 of this class. The committee allowed him but 13, believing that John Burkett, of Salebury, was not a qualified voter. (See page 291, testimony of Watson and Kitchen.) He also attacked the votes of some fifteen other persons which were cast for contestant, but in the judgment of the committee failed to prove them illegal. He attacked in all 37 votes, twenty two of which charges are sustained by the committee and the other fifteen overruled. (See Statement F, hereto attached.) He also claims two other credits in his brief, one in the fourth division, Twenty-second ward, amounting to 13 votes, and the other in the sixth division, Twenty-third ward, amounting to 8 votes. The general returns and the hourly returns in both of these cases correspond, and are against the claim set up by the incumbent. Here again he seeks to go behind the return. He has not produced the ballot-boxes, nor asked to have them examined. He has not called as a witness a single officer of the election at either precinct. He has not produced the list of voters at either of these precincts to show your committee how many persons voted. He asks these credits solely upon what he calls the tally-lists. He produces neither of the original tally-lists, and nothing which is certified by any anybody to be a true copy of either of such tally-lists; but he does produce, in regard to the fourth division, Twenty-second ward, a certificate from the prothonotary of Philadelphia that "the above is a true and correct copy of the return of votes for member of Congress at an election held in fourth division of the Twenty-second ward, on the 13th day of October, 1868, *taken from the tally-list now on file in this office.*"

The aggregate or addition of votes at the end of this paper, is marked 175 for Reading, 410 for Taylor. The general return and the hourly return both give 171 for Reading, and 419 for Taylor. In the absence of all the proofs which might have been produced to explain these discrepancies and overthrow or change the return, the committee now proceed to give such circumstances as the papers before them furnish. Either the election officers did not keep any tally-lists by units, or, if they did, the prothonotary has furnished no copy of the same in this case. Indeed, he does not pretend to make a full or true copy of the tally-list. The paper he sends contains X's, V's, and units for about one-half, and nothing but figures for the other half. The discrepancies between the returns and the so-called tally-list evidently occurred in the fourth hour. By a reference to this paper, called "tally-list," we find that every hour except the fourth corresponds on the tally paper with the hourly returns. In the fourth hour we find, however, for Reading, a letter appearing like a "V," then an X, followed by three units, thus, VXIII. This would count 18. Above this we find, first, the figures 13, then the 3 changed to a 4, and the 14 carried into the hourly return. The opinion of the committee is, that this V was intended as a



unit, (I,) and this explanation would make all the papers correspond. The committee has examined all the so-called tally-papers sent by the prothonotary, and this is the only case in which the V is placed before the X. In regard to the supposed error in Mr. Taylor's favor on this tally-list, it also seems to have occurred in the fourth hour. We have there three X's, a V and four units, thus, XXXVIII, and above these is written, first, in plain letters, 38. The 8 is then changed to a 9, and a cipher or ring drawn around the first X. The hourly return in this case shows 38 votes for Taylor. The second hour on the tally-list gives Taylor 90, while the figures above the tally in the hourly return give him 89. By counting the second hour 89, and the fourth hour 38, as shown by the hourly return, and taking either the tally-list or hourly return for the balance, Mr. Taylor received in this precinct 419 votes, being precisely what is given him by the general return.

The figures on this tally-list at the fourth hour show conclusively that the attention of the board was called to these discrepancies at the time, and the fair presumption is that the board acted honestly and made a correct return. At least, the evidence offered against this return is, in the judgment of the committee, entirely insufficient to alter it, and the claim for this credit of 13 votes is not allowed.

The claim for the credit of 8 votes in the sixth division, Twenty-third ward, is entirely groundless. Here, again, the general return and the hourly return agree; no list of voters is produced, no officer of the election called, and the claim rests entirely upon a supposed discrepancy between the tally-list and the return. This discrepancy has no existence in fact. The paper produced is certified by the prothonotary as in the other case. It does not purport to be a full or true or correct copy of the tally-list, only "a correct copy of the return of votes *taken from the tally-lists.*" The general return and the hourly returns give to Mr. Taylor 273 votes, and to Mr. Reading 174 votes. The tally-list gives to Mr. Reading 174 votes. About this there is no dispute. We are clearly of opinion that this same tally-list gives 273 votes to Mr. Taylor, and corresponds with the returns. An inspection of the paper itself will show that the tally for Mr. Taylor contains two lines or rows of units, the lower line having been made very short and small, the upper line long and heavy, the last eight units or strokes of the upper line running down into and upon the lower line or row of tallies; both sets of strokes, however, being distinctly visible, and showing that one tally and three units on the lower row of tallies are entirely covered by the large units contained in the upper row. This view of the case is strongly corroborated, and the conclusion made absolutely certain, by a comparison of the hourly return with the tally-list. In the first hour Mr. Taylor received 73 votes, and this is shown by the hourly return and by the tally-list itself. In the second hour he received 66 votes; in the third hour, 33 votes; in the fourth hour, 20 votes; in the fifth, 16 votes; in the sixth, 10; in the seventh, 19; in the eighth, 11; in the ninth, 11; in the tenth, 6; in the eleventh, 8. All these are clearly shown by the tally-list itself, as well as by the hourly return. To allow the credit here claimed would be to deprive Mr. Taylor of 8 votes cast for him during the last hour and contained in the general return, the hourly return, and the tally-list. This claim is therefore disallowed by the committee. The incumbent also claims credit for 6 votes by reason of an error in the addition of the returns from the several precincts of the Twenty-second ward. On a careful examination of these returns, and the addition thereof, we think the claim is well founded, and allow to him the additional 6 votes.



We have now examined all the claims set up by the incumbent and disposed of the same, and found his majority arising from the questions thus far considered to be 144 votes. The contestant seeks to overcome this majority in various ways. He charges that several persons legally entitled to vote offered to vote for him and that their ballots were improperly rejected. Of this number, in the opinion of the committee, the contestant has clearly established his right to 4. (See Statement E, hereto attached.) This reduces the majority of the incumbent to 140. He also charges that a large number of votes were cast for the incumbent by persons not legally entitled to vote; of this number 58 are admitted by the incumbent in his brief. (See Statement A, hereto attached.) A careful examination of these 58 cases by your committee warrants the conclusion that these admissions were honestly made and for good cause. This reduces the majority to 82. In addition to the 58 admitted confessedly illegal votes, contestant charges that 105 other illegal individual votes were cast for incumbent. Of these the committee has sustained the charges against 51, and overruled them against the other 54. (For names, reasons, &c., of the 51, see statement hereto attached, marked B; for the names, &c., of the 54, see statement hereto attached, marked G.) The 51 votes found to be illegal by the committee were for various causes, such as non-residence, non-payment of tax, colonization, minority, fraudulent naturalization papers, alienage, &c. These cases were all so clear that the committee was unanimous except in regard to some five colonizers and three non-resident soldiers. No further explanation in regard to any class of these voters is deemed necessary, except in the case of the soldiers. It is in proof that twenty soldiers of the United States Army, stationed at Frankford arsenal, voted for the incumbent in the eighth precinct of the Twenty-third ward. Had these men a right to vote there? It is entirely immaterial to discuss the question as to whether they could have voted elsewhere or not. The only question before us is as to whether they were entitled to vote at that particular poll, where the vote was actually cast. To entitle a person to vote at any poll in Pennsylvania, under the laws of that State, he must have at the time of the election an actual residence in the precinct. Mere personal presence will not fulfill the requirements of the law. There must be a residence, and it has been well settled that residence is a question of intention. Had any of those men any intention to be at that particular place, or in that particular precinct, on that or any other day? From the necessity of the case they could not. They were in that precinct not by their own volition, but by command of their military superiors. An order issued to transfer them to Fort Lafayette on October 1 would have taken them far away from the precinct. In the case of *Bowen vs. Given* it was expressly decided that an enlisted man did not gain a residence under similar circumstances. So, too, in the case of *Howard vs. Cooper*, thirty-sixth Congress, *Contested Election Cases*, 1843 to 1865, page 275, it was held under the law of Michigan that to be entitled to vote a man must have come into the State and township or ward with the intention of making it his permanent residence, and the law of Pennsylvania is quite as strict on this point as that of any other State, for if challenged at the poll the person offering the vote must also himself swear that his bona fide residence in pursuance of his lawful calling is within the district. (See *Burden's Digest*, *Laws of Pennsylvania*, edition of 1853, page 286 and page 46.) How could a man so swear when he is there at the command of a power superior to his own will? As bearing particularly upon this point we add that in 1862 a contest arose in the State of Pennsylvania in regard to the right of sol-



diers to vote in camp or in quarters. In the trial of this case the constitution of Pennsylvania and the several statutes of the State regulating this subject or question were fully and elaborately considered. The case is entitled *Chase against Miller*, and reported in 5 Wright, pages 403 *et al.* The supreme court of the State held—

First. That residence, in the constitution, is the same as domicile—the place where a man establishes his abode, makes the seat of his property, and exercises his civil and political rights.

Second. The right of a soldier to vote under the constitution is confined to the election district where he resided at the time of his entering the military service.

The opinion in this case, which is quite lengthy, and covers the entire ground, was delivered by Woodward, judge, and from it we quote. (The court below had decided in favor of the soldier's right to vote, and his judgment was being reversed by the supreme court.)

The learned judge deprecates a construction that shall *disfranchise* our volunteer soldiers. It strikes us that this is an inaccurate use of language. The constitution would disfranchise no qualified voter. But, to secure the purity of election, it would have its voters in the place where they are best known on election day. If a voter voluntarily stays at home, or goes a journey, or joins the army of his country, can it be said the constitution has disfranchised him? Four of the judges of this court, living in other parts of the State, find themselves, on the day of every presidential election, in the city of Pittsburgh, where their official duties take them, and where they are not permitted to vote. Have they a right to charge the constitution with disfranchising them? Is not the truth rather this, that they have voluntarily assumed duties that are inconsistent with the right of suffrage for the time being? Such is our case, and such is the case of the volunteers in the army. The right of suffrage is carefully preserved for both them and us to be enjoyed when we return to the places which the constitution has appointed for its exercise. It is forcing a gratuitous assumption upon the constitution to treat it as intending that the volunteer in the public service shall carry his elective franchise with him wherever his duties require him to go. There is no word or syllable in the instrument to justify the assumption.

The views here expressed, and the judicial opinions here given, might, perhaps, exclude all, or nearly all, of these 20 votes. The committee, however, leaning always toward sustaining the right of suffrage, and giving always to the returned member the benefit of every doubt, has divided this list of twenty into three classes. The first class consists of persons who resided in this precinct at the time of their first enlistment, and consequently did not change residence. There are three of this class, to wit, James Cleary, Peter Hobin, and James Larkin, and their votes are allowed. The second class consists of those persons who had enlisted but once, who resided at the time of their enlistment outside of this precinct, and who had done nothing to indicate any determination on their part to change their residence, and who had made no election of this particular place as their place of residence since the time of their enlistment. On the contrary, two of this class testified that at the very time they voted their families resided elsewhere, and it is clearly proved that the entire class, seven in number, left the place soon after the election, and have not returned. They were all single men except these two before referred to. Their names are Richard O'Leary, Owen Sheridan, Robert Armstrong, John Kennedy, John Laffey, Frederick Kopp, and Lewis Bingham. These 7 votes were rejected, being a part of the 51. (See Statement B.) The third class consists of those who did not reside in the district at the time of their enlistment, but remained for some years, in some cases re-enlisting once, twice, and in one case three times. Most of these men have either purchased or rented property, had families in the district, and had given other evidences of an intention to elect this precinct as the place of their abode. These 10 votes are allowed. The names of these voters were Samuel Getty, Patrick



Ellison, Michael Farrell, Hugh McLaughlin, Edward Shields, Peter Held, Charles Fischer, Herman Gaffkin, James McGiven, and Benjamin Knowles. Deducting the 51 votes contained in Statement B from the 82 majority heretofore shown in favor of incumbent, there remains a majority of 31.

The contestant claims 10 additional votes in the second division, Twenty-second ward. In this precinct the return shows for Reading 169; for Taylor, 159. William J. Canby, on page 87, swears that Mr. Taylor had 169 votes in this box; that he had 60 votes in the second hour, and that the judge struck off 10 votes from Mr. Taylor in the general return, and also in the return of the second hour, reducing the former to 159, and the latter to 50. Mr. Canby was one of the inspectors, and says this action was taken by the judge, against his protest, for the reason that there were more tickets in the box than there were names on the list of voters. In addition to this testimony, which is wholly uncontradicted, your committee has examined the general return, which shows that 169 has been altered to 159, the 5 having been written over the 6. They also find that the hourly return shows precisely a similar alteration. They also find that the tally-list contains 169 votes for Mr. Taylor. This credit is therefore allowed, reducing the majority of the incumbent to 21 votes.

Contestant also claims 6 votes by reason of an error in the returns of the fourth division, Twenty-fifth ward, being, as he says, 3 too many for incumbent, and 3 less for contestant than he received; 552 persons voted at this poll. (See page 246.) The return shows 49 votes for Taylor and 501 for Reading. Mr. Taylor has called 52 witnesses (see his brief, page 20) who swear that they were qualified electors of this precinct, and that they voted for him. This of itself would give him 3 more votes than the return, and as these 3 could only come from those counted for Reading, would entitle Taylor to a credit of 6. This claim is very much strengthened by the production of the tally-list, which shows 50 votes for Taylor and only 496 for Reading. The error against Taylor cannot, therefore, be less than 6 nor more than 10, by reason of the miscount. The committee has adopted the lowest number, and allowed a credit for 6 votes, reducing the majority for incumbent to 15.

The contestant asks the committee to throw out the entire poll of Durham Township in the county of Bucks.

In this township it is proved that twelve persons voted for incumbent upon fraudulent naturalization papers. Most of these were furnished by Levi Black, the democratic inspector of election in that township. It is difficult to give credence to the alleged official acts of one so steeped in fraud as he is proved to be, violating his oath of office in the reception of votes known by him at the time to be illegal; delivering with his own hand certificates obtained by him, with a full knowledge of their fraudulent character, in secrecy, to the ignorant recipients, and encouraging them to violate the very law he was sworn to enforce. Eight of these papers are traced into his hands by the evidence; it is difficult to say that there may not have been more of the same kind. Criminal proceedings were commenced against these parties. Some of them ran away; eleven were arrested; of these, three plead guilty, seven were convicted, and one was acquitted. The whole ten were sentenced. Of these fifteen alleged illegal votes, ten have been admitted and are contained in Statement A. Several more have been found illegal by your committee, and are contained in Statement B. The other officers of this election have not been clearly implicated in this fraud,



and the committee has concluded to overrule the objection made by contestant against this entire poll.

Contestant claims a credit for 51 votes in the township of Bensalem, county of Bucks, by reason of an error or fraud perpetrated at that poll. In this township 492 persons voted. (See testimony on page 270.) Of these, 319 were returned for incumbent, and 173 for contestant. Mr. Taylor has called and examined 190 qualified voters of that township, who testified that they had voted the entire republican ticket, and for Caleb N. Taylor for Congress.) See contestant's argument, pages 21 and 22.)

In addition to this he proves that ten of the democratic tickets voted in said township contained the name of Caleb N. Taylor for Congress. Three of these he proves by the democrats who voted them, and the other seven by Samuel H. Harrison, one of the election officers, (page 170.) Of these the incumbent concedes to contestant 24, but it seems clear to your committee that if Mr. Taylor received 200 votes, as the proofs show he did, instead of 173, as shown by the return, he is entitled to twenty-seven more, and the incumbent necessarily to twenty-seven less, than the returns, making a clear gain to contestant of fifty-four votes at this poll. This would overcome the majority of the incumbent, and elect the contestant by a majority of thirty-nine votes.

Your committee, however, cannot dispose of this district without further comment. We have just seen an undoubted error of fifty-four votes in the count. How many more democrats may have voted for Mr. Taylor it is impossible to tell. We have seen six illegal votes cast for incumbent admitted in his brief, (see Statement A, last six names.)

We also find that four other illegal votes were polled for incumbent, as shown by Statement B.

We find also that several efforts were made by contestant to secure the evidence of the officers of this election, and all without success. In order to counteract the legal presumption arising from their conduct in this particular, we find these same officers going at a time and place not known to nor named by contestant, in the absence of himself and his leading counsel, and requesting to be examined, although they knew at the time that another day and another place had been designated for the taking of their testimony. At another time we find a personal appeal made by contestant, to have their evidence taken at some future time, entirely disregarded and refused. Contestant charges that the ballot-box in this district was tampered with; that during the dinner hour a large number of republican tickets were extracted from the box and an equal number of democratic tickets substituted in their stead. It is abundantly shown by the evidence that the opportunity was at least present if not purposely afforded to any one who might be willing to perpetrate this fraud. Although he has not been able to prove the exact method by which this feat was accomplished, yet when we consider the number of witnesses he has called and the extent of the fraud which he has been able to show, accompanied by the fact that the officers who knew and who might have been able to explain, if innocent, were not called by incumbent, and the further fact that while the contestant was calling and examining his two hundred witnesses the incumbent called none, your committee can come to no other conclusion than that the claim of contestant to a credit for these fifty-four votes is clearly and fully vindicated.

The contestant also claims a credit for fifty-three votes cast by persons not assessed, and, as he charges, illegally received by the election officers of the fourth division, Twenty-fifth ward. The law of Penn-



sylvania on this subject is clear and explicit. It is contained in the sixty-sixth section of the act of July 2, 1839, and reads as follows:

*In all cases where the name of the person claiming to vote is not found on the list furnished by the commissioners and assessor, or his right to vote, whether found there or not, is objected to by any qualified citizen, it shall be the duty of the inspectors to examine such person on oath as to his qualifications, and if he claims to have resided within the State for one year or more his oath shall be sufficient proof thereof; but he shall make proof by at least one competent witness, who shall be a qualified elector, that he has resided within the district for more than ten days next immediately preceding said election, and shall also himself swear that his bona fide residence, in pursuance of his lawful calling, is within the district, and that he did not remove into said district for the purpose of voting therein.*

It is shown by the evidence, (page 47,) asserted by the contestant, (his brief, page 2,) and admitted by incumbent, (his brief, page 61,) that sixty-one persons who were not assessed in this precinct voted at the October election in 1868.

The duties imposed upon the officers of election when such votes are tendered are so plain and so explicit, and the reason so obvious, that it seems incredible when we are informed that it was systematically violated from the opening to the closing of the polls in this precinct. Of these sixty-one unassessed voters, two, however—No. 62, Michael Fleming, and No. 353, James O'Donnell—are on the extra assessment. Of the remaining fifty-nine, Morrissey Heron, who voted No. 360, is Morris Ahern, assessed; Francis Harvey, who voted No. 310, is Francis Kearney, assessed; Thomas Madden, who voted No. 31, is assessed as Philip Madden; James McDonough, who voted No. 463, is assessed as John McDonough, Mitchell Cornell, No. 508, is E. M. Carnell, who is assessed; and No. 166, Daniel Hagerman, it is likely is intended for John Hagaman, who is assessed and voted, but whose name does not appear on the list of voters. This reduces the list to fifty-three. Each one of these persons was required to be sworn or affirmed, and each of them was required to bring a qualified elector to testify to his residence for the proper time, and no vote could be legally received without these preliminary requirements were fulfilled. From the evidence before us it is impossible to say that the oaths required by law were administered during the day, and the witnesses called by the incumbent from these unassessed persons show that if the law had been fully or even partially complied with by the officers, by swearing the voter and examining him, many of their votes could not have been received. For examples: Edward Harraty, No. 272, over twenty-two, but never paid tax; Patrick Kathgan, No. 140; Urias Pearson, No. 374; Francis Mulvahill, No. 94; Christopher Mulvahill, No. 362; Edward Porterfield, No. 498; Michael Grundy, No. 282. All these persons swear that they paid a tax just prior to the October election, but not one of them was assessed, and under the constitution of Pennsylvania the tax must be assessed as well as paid. The issue of those receipts was fraudulent and the holders acquired no right by them which they did not possess without them. The John McDevitt called by the incumbent did not prove the unassessed vote in that name, for there were three of that name, including the witness, assessed, and four voted. The evidence of Patrick Killroy will not answer for Patrick Gillroy, No. 358, while his name appears as No. 425.

In the case of *Read vs. Kneass* (2 Parsons, equity) the court of common pleas of Philadelphia struck out all the unassessed votes received without all the proofs directed by law. So, too, in the case of *Mann vs. Cassidy* (1 Brewster, 11) the same court again struck them out; and in the cases of *Batturs vs. Megary*, *Campbell vs. Leech*, and *Urwiler vs.*



Ballier, (*Ibid.*, 162,) the court says: "Divisions in which the law has been entirely disregarded should be stricken out."

At the election in which the names of contestant and incumbent were submitted to the people of the fifth district as candidates for Congress, the names of Thayer and Greenbank were submitted as candidates for judge.

Mr. Greenbank was returned as elected and his election was contested. A committee of the senate and house of representatives of Pennsylvania, selected by law to try the case, declared Mr. Thayer legally elected, and in their decision threw out the entire poll of the very precinct we are now considering.

At the same election several city and county officers were also chosen. Both parties claimed to have elected their candidates to these positions. This resulted in a contest lasting for a considerable period of time. One of the points in these several contests was this same fourth division of the Twenty-fifth ward of Philadelphia. In deciding these cases the court said:

In the fourth division of the Twenty-fifth ward, we find:

First. Frauds in the records.

Second. Frauds in the boxes.

Third. Force at the poll.

Upward of fifty persons voted who were not on the assessment list. Others are marked as voted who did not vote at all. A large proportion of the voters were foreigners, yet not one naturalization paper was produced. Only three vouchers and only two or three of the voters were sworn.

One officer marked up the book after the polls closed. There were a number of per sonations. A man who held an outside window-book was prevented from getting to the window to challenge, and after several efforts a deputy sheriff finally got the book from him. During one hour no questions were asked. None of these allegations are contradicted or even explained to my satisfaction, and I find it again a hopeless task to sift this poll. The views herein expressed as to the sixth and seventh divisions of the Seventeenth ward, and the fourth division of the Twenty-fifth ward, are concurred in by the president judge; but our brother, Judge Pierce, differs from Judge Allison and myself as to the effect of the testimony bearing upon these last three divisions. He is of the opinion that the evidence on this part of the case shows that challenges were regarded, vouchers required, and that the general provisions of the election law were complied with. These reasons influence his judgment to the conclusion that these polls should not be entirely rejected, but that they should be purged to the extent hereinafter indicated.

The same court in this same case, under the evidence before them, undertook to purge this poll and threw out 51 votes cast for the democratic candidates, being the votes of persons whose names were not contained upon the assessment list, and not including several single or individual votes rejected for other reasons. In this action of the court all the judges seem to have united.

In another part of the opinion of the court Judge Brewster uses the following language in reference to the very question now under consideration, to wit:

Another absolution of these wrongs has been invoked. It has been urged that if the person whose vote was legally received is now called and he swears that on the election day he lived in that division, the fraud is instantly purified. We do not so understand the law. The statute challenges the man whose name is not on the list. It matters not that he is known to every man at the poll; the people of the whole Commonwealth challenge his vote. The State steps in and says, "You shall comply with my law before that ballot passes into the box." His own oath of residence then would not be enough. Shall it avail afterward? At the poll he should produce a tax receipt, produce a voucher, and two oaths should be administered. This is all disregarded, and it is supposed that the defect is remedied if one of the four requirements is complied with when the case comes before the court. It is an answer to all this sophistry to say that while the law stands it is a part of our oath to enforce it; that an *ex post facto* obedience to one mandate cannot absolve the disregard of three other commands, and that frauds like these can only be purged by distinct and full proof as to every vote claimed in these divisions.



Incumbent in his brief charges that six of these unassessed votes were cast for contestant, three of those, to wit: Hilburn, Hageman and Mitchell Cornell, have already been considered, proved, admitted, and deducted from the 61. The other three votes for Taylor, Robbins, Swann, and Snyder, proved their right to vote, and also proved that they were assessed. There may have been other persons of the same name, but inasmuch as that fact has not been clearly established we deduct these three from the unassessed list, which reduces it to 50. We also think that the weight of evidence establishes the fact that the following additional list of names should be deducted from the unassessed list, for the reason that the persons named thereon were entitled to vote, to wit: Peter Phillips, No. 333; P. Boyle, 413; Thomas Duffy, 446; Wm. McIntyre, 509; Peter Steelman, 511; Dennis Harkins, 23, may possibly have been intended for Edward Harkins; James Woonan, 241, possibly a mistake in the name; Edward Hauzgtz, 272, is probably Edward Hauraty, who was one of the admitted illegal votes for Reading. These eight votes being deducted from the 50 unassessed, as hereinbefore stated, will leave 42. There are still 9 others claimed to be proved by the incumbent, and which, owing to similarity of names, possibility of errors in spelling, and a desire to err, if at all, in favor of the right of franchise, we have concluded to deduct from the list of unassessed voters. These are No. 243, Wm. Yanan or Yonam or Yunam; No. 61, Joseph Hedding or Heddeng or Hedden; No. 216, Samuel Ross; No. 538, Dolty Leonard; 379, Dennis Duffy; 424, Thomas McSorley or McSorely or McLorley; 457, Thomas McCusker or McCluskee or McCascker or McCoskey; 548, Thomas Coughy may be intended for Coffey, and No 551, Patrick Connelly may be intended for Patrick Conlin. Deducting these nine votes from 42 before remaining, we have left 33, which we credit to the contestant under this claim, making his majority 72 votes.

The committee desire to state that nearly all of the twenty names last deducted from the unassessed list of fifty-three in this precinct have been so deducted, not because clearly proved, but for the reason that some doubt was thrown around these several cases, and for the other reasons hereinbefore stated. In all of the thirty-three cases remaining and collected the proof falls entirely short, and would not have justified the election officers in receiving any of these votes.

The contestant also claims that the entire polls in the township of Bensalem, and in the fourth division of the Twenty-fifth ward should be rejected, and these returns entirely excluded from the count. But inasmuch as the determination of these questions, or either of them, in his favor could only add to his majority, already clearly established, the committee has not determined these questions. In regard to them we only add that the fourth division, Twenty-fifth ward, was considered by a committee of both branches of the legislature of Pennsylvania, and the entire poll rejected. It was again considered by the court in Philadelphia, and two of the judges advocated the exclusion of the entire poll. The other two dissented from this view, but the whole court united in rejecting 51 unassessed voters in this precinct.

The township of Bensalem, in the opinion of the committee, presents a condition of things even more glaring and more dangerous than in the fourth precinct of the Twenty-fifth ward. No explanation has been given, indeed none has been offered, to account for the strange exhibition of fraud or mistake; or both, which occurred at this poll. It will, probably, never be answered, and it is greatly to be hoped that it may remain forever unparalleled.



RECAPITULATION.

Reading received by general return.....	13, 199
Votes offered for him and improperly rejected, (Statement D) ..	13
Error in addition, Twenty-second ward.....	6
Error in addition, eighth division, Twenty-second ward.....	1
<b>Total</b> .....	<b>13, 219</b>
Deduct illegal votes admitted, (Statement A).....	58
Deduct illegal votes proved, (Statement B).....	51
Deduct illegal votes, Bensalem.....	27
Deduct unassessed vote fourth division, Twenty-fifth ward..	33
	<b>169</b>
<b>Total vote for Reading</b> .....	<b>13, 050</b>
<b>Taylor received by a general return</b> .....	<b>13, 158</b>
Votes offered for him and improperly rejected, (Statement E) ..	4
Error in addition and return, fourth division, Twenty-fifth ward.	6
Error in addition and return, Bensalem.....	27
Error in return, second precinct, Twenty-second ward.....	10
<b>Total</b> .....	<b>13, 205</b>
Deduct error in third division, Twenty-third ward.....	60
Deduct illegal votes, errors in count and tickets, (Statement C).....	23
	<b>83</b>
<b>Total vote for Taylor</b> .....	<b>13, 122</b>
<b>Total vote for Reading</b> .....	<b>13, 050</b>
<b>Taylor's majority</b> .....	<b>72</b>

The committee, therefore, offer the following resolutions:

*Resolved*, That John R. Reading is not entitled to a seat in this House as representative from the fifth congressional district of Pennsylvania.

*Resolved*, That Caleb N. Taylor is entitled to a seat in this House as representative from the fifth congressional district of Pennsylvania.

All of which is respectfully submitted.

APPENDIX.

A.—*Illegal votes cast for incumbent, admitted in his brief.*

No.	Name of voter.	Place of voting.	Witnesses.	Page.	Remarks.
PHILADELPHIA.					
1	John Fischer .....	2d div., 22d ward .....	John Fischer .....	78, 79	Non-resident.
2	Daniel Farley .....	5th div., 25th ward .....	Daniel Farley .....	88	Fraud. nat. papers.
3	Ransler Barber .....	do .....	John C. Sees .....	226	Non-resident.
4	William S. Youell .....	4th div., 25th ward .....	William S. Youell .....	225	Alien.
5	Owen McGovern .....	do .....	Owen McGovern .....	230	Do.
6	Edward Hauraty .....	do .....	Edward Hauraty .....	374	Non-payment tax.
7	Thomas O'Brien .....	do .....	Lydia Scull .....	66	Non-resident.
8	James Brogan .....	do .....	Ellen Fitzpatrick .....	67	Do.
9	James Short .....	do .....	Mary Gallagher .....	67	Do.
10	George W. Myers .....	do .....	George W. Myers .....	68	Personated.
11	Peter Farrel .....	do .....	Peter Farrel .....	68	Do.
12	Edward McVey .....	do .....	Edward McVey .....	68	Do.



A.—*Illegal votes cast for incumbent, &c.*—Continued.

No.	Name of voter.	Place of voting.	Witnesses.	Page.	Remarks.
BUCKS COUNTY.					
13	Henry Reinheimer.	Milford Township.	Joseph Miller Henry Reinheimer Allen Sherer	16, 18, 25	Minor.
14	Christopher Ratican.	do	James Cressman S. W. Weiss W. Weil	22, 23, 195	Pauper from alms-house.
15	Henry Althouse.	do	James Cressman S. W. Weiss W. Weil	22, 23, 195	Pauper from alms-house.
16	Frederick Frash.	Warminster.	James Cressman S. W. Weiss W. Weil	22, 23, 195	Pauper from alms-house.
17	Allen Sherer.	Milford.	Allen Sherer	24	Minor.
18	George Keller.	Haycock Township.	George Keller S. B. Thatcher	23, 196	Non-resident.
19	George N. Patrick.	do	George N. Patrick	217	Alien.
20	Samuel R. Eggert.	do	S. R. Eggert S. A. Smith	196, 199	Non-payment tax.
21	Daniel Harrity.	Lower Makefield.	Daniel Harrity	180	Do.
22	William Burk.	do	William Burk	179, 180	Do.
23	John Paul.	Bristol Township.	John Paul	181	Alien.
24	John Weaver.	Bristol Borough.	J. B. Pennington J. S. Tomlinson	181, 182	Non-payment tax.
25	J. K. Polk Parry.	do	J. S. Tomlinson	182	Non-resident.
26	Richard Welch.	do	Richard Welch	185	Fraud. nat. papers.
27	James K. Polk Evans.	Southampton.	J. K. P. Evans J. C. Evans	189, 191	Non-resident.
28	Henry Runt.	Tinicum.	Henry Runt	201	Alien.
29	William Emory.	do	William Emory	205	Non-payment tax.
30	George Streepy or Strebick.	Nockamixon.	F. Strebick	203	Minor.
31	William Amendt.	do	William Amendt	203	Non-resident.
32	George Myers.	do	George Myers	204	Non-payment tax.
33	Michael Rupel.	Bridgeton.	Michael Rupel	204	Do.
34	Levi L. Diley.	Richland.	Levi L. Diley	208	Minor.
35	G. Dallas Niblick.	Buckingham.	G. D. Niblick	210	Non-payment tax.
36	John O. Service.	Doylestown Borough.	John O. Service	210	Do.
37	William Moore.	Warminster.	William Moore	212	Do.
38	George Alhoff.	do	George Alhoff Robert Beans	212, 213	Do.
39	Jacob Fisher.	do	Jacob Fisher Robert Beans	213	Do.
40	Charles M. Amey.	New Hope.	Charles Mathews John Pitcock	214, 215	Minor.
41	George Wolfington.	Hilltown.	George Wolfington	216	Do.
42	John Cogan.	Quakertown.	Richard L. Bruff S. J. Levick	222, 228	Non-resident.
43	Nicholas Gibney.	Durham.	Fraudulent naturalization papers furnished by Levi Black, democratic inspector of election.	159, 160,	Fraud. nat. papers
44	Michael Welsh.	do		162, 163,	
45	Patrick Ward.	do		164, 165,	
46	John Quinn.	do		208, 210,	
47	Dennis Cleary.	do		209, 218,	
48	Richard Skain.	do		235, 237,	
49	Edward Delahanty.	do		238,	
50	Henry Minnebach.	do	Patrick Sexton.	160, 161,	Do.
51	Patrick Sexton.			208, 218, 206, 225	
52	John Fogarty.	do	B. F. Fackenthall.	208	Do.
53	James Barlow.	Bensalem.	W. H. Paxson	140	Non-resident.
54	Nathan Rambeau.	do	J. W. Walton	156	Do.
55	David Hess.	do	David Hess	166	Minor.
56	Thomas Fox.	do	Thomas Fox	167	Alien.
57	Thomas Hooper.	do	Thomas Hooper	171	Non-resident.
58	Theodore Jones.	do	Albert Taylor S. H. Harrison	171	Minor.

In addition to the above he (incumbent) admits, in brief, that contestant is entitled to a credit of twenty-four votes in Bensalem Township—making in all eighty-two votes admitted illegal by incumbent.



B.—*Illegal votes cast for incumbent in the Twenty-second, Twenty-third, and Twenty-fifth wards of Philadelphia and in Bucks County, not admitted in his brief, but proved by the evidence, in the judgment of the committee.*

No.	Name of voter.	Place of voting.	Witnesses.	Page.	Remarks.
PHILADELPHIA.					
1	Nicholas Bitner.....	1st div., 22d ward...	Thomas F. Middleton.	121	Fraud. nat. papers.
2	Lawrence Kelly.....	4th div., 22d ward...	Alexander P. Keyser.	114	Non-resident.
3	Andrew Brown.....	7th div., 22d ward...	Rev. J. H. M. Knox } Thomas Dutton..... } William Dunlap..... }	83, 117	Minor.
4	Richard Doubleday.	10th div., 22d ward.	R. Doubleday.....	83, 84	Not naturalized.
5	William Calder.....	1st div., 22d ward.	Thomas Dutton.....	121	Non-resident.
6	William Childs.....	5th div., 22d ward.	Thomas F. Middleton.	83, 124	Minor.
7	George Finder.....	.....do.....	Thomas Dutton.....	120	Fraud. nat. papers.
8	Joseph Lukens.....	7th div., 22d ward.	William Hopkins.....	117	Minor.
9	James McLaughlin.	7th div., 23d ward.	George R. Krickbaum } William Dunlap..... } E. F. Dungan..... }	111	Not in State long enough.
10	Richard O'Leary.....	8th div., 23d ward.	Jesse H. Cottman..... } Richard O'Leary..... } W. K. Pigott..... }	94, 97, } 369	Soldier.
11	Owen Sheridan.....	.....do.....	S. Getty..... } Owen Sheridan..... } W. K. Pigott..... }	95, 97, } 110, 369	Do.
12	Robert Armstrong.....	.....do.....	W. Taylor.....	95, 97	Do.
13	John Kennedy.....	.....do.....	S. Getty..... } Patrick Ellison..... } W. K. Pigott..... }	96, 97	Do.
14	John Laffey.....	.....do.....	John Kennedy.....	97	Do.
15	Frederick Kopp.....	.....do.....	W. K. Pigott.....	97, 360	Do.
16	Lewis Bingham.....	.....do.....	W. K. Pigott.....	97, 369	Do.
17	George Mott.....	1st div., 25th ward.	S. Getty..... } W. K. Pigott..... } Theodore F. Weyser..... }	123	Not long enough in division.
18	Owen McKenna.....	2d div., 25th ward.	William Sargent..... } Owen McKenna..... } John Schickling..... }	109, 361	Non-resident.
19	John Schickling.....	5th div., 25th ward.	John Bergman..... } John Hauseman..... }	106, 107	Minor.
20	Patrick Collins.....	.....do.....	John C. Sees.....	226	Non-resident.
21	William Concious.....	.....do.....	John C. Sees.....	226	Fraud. nat. papers.
22	Washington Gandy.....	4th div., 25th ward.	Washington Gandy.....	68	Personated.
23	Daniel Harkins.....	.....do.....	Daniel Harkins.....	220	Do.
24	Thomas McGovern.....	.....do.....	Mary A. McGovern.....	221	Personated, dead.
25	John McIlwaine.....	.....do.....	John McIlwaine.....	72	Fraud. nat. papers.
26	James McKenna.....	2d div., 22d ward.	Louis Wagner.....	84, 85	
BUCKS COUNTY.					
27	Alkanus Markley.....	Milford Township.	Alkanus Markley..... } Stephen Ortt..... } Peter Kline..... }	15	Colonizer.
28	Henry Miller.....	.....do.....		27	Do.
29	John Heller.....	.....do.....		23	Do.
30	Enos Wolf.....	.....do.....			Do.
31	Isaac Blank.....	.....do.....			Do.
32	Henry Kresimer.....	.....do.....			Do.
33	John Giffen.....	.....do.....	John Griffin..... } Sumners A. Smith..... }	20, 196	Non-payment tax.
34	Israel Correll.....	.....do.....	Israel Correll..... } James Cressmen..... }	21, 23, } 198	Non-resident.
35	John Dill.....	.....do.....	William M. Schaffer.....	18, 23	Colonizers.
36	Nathan Reiter.....	.....do.....	James Cressman.....	23, 29	Non-resident.
37	Jacob Bartholomew.	Haycock Township	J. Bartholomew..... } S. B. Thatcher..... }	166	Do.
38	Benjamin Foster.....	Bensalem Towns'p.	Benjamin Foster.....	167	Non-payment tax.
39	Thomas Willard.....	.....do.....	Thomas Willard.....	171, 172	Do.
40	Thomas Terry.....	.....do.....	Thomas Terry.....	167	Do.
41	L. H. Vandegrift.....	.....do.....	L. H. Vandegrift.....	187	Non-resident.
42	John Weaver.....	.....do.....	John Worrell.....	209-218	Fraud. nat. papers.
43	Keron Turley.....	Durham Township	Levi Black.....	207	Do.
44	Thomas Garrigan.....	.....do.....	Thomas Garrigan.....	182, 183	Alien.
45	Edward Høding.....	Bristol Borough	J. S. Tomlinson..... } Albert Høding..... }	186	Fraud. nat. papers.
46	Thomas Kiernan.....	.....do.....	Thomas Kiernan..... } J. S. Stackhouse..... }	173, 188, } 194	Non-payment tax.
47	James C. Cornell.....	Middleton Towns'p	E. G. Harrison..... } John P. Thompson..... }		



*B.—Illegal votes cast for incumbent, &c.—Continued.*

No.	Name of voter.	Place of voting.	Witnesses.	Page.	Remarks.
	BUCKS COUNTY—Con.				
48	John Bolstenhart	Northam'ton Tow'p	Jesse B. Twining .. Charles Craven .. James W. Bartlett.	192, 199, } 230	Fraud. nat. papers.
49	Matthew Gorman	.....do .....	Thomas Swezey .. Charles Craven ..	194, 199	Do.
50	John Summers	Tinicum Township	John Summers .. Isaac Summers ..	201	Minor.
51	Andrew Ruple	Bridgeton district.	S. A. Smith .. S. C. Pursell ..	202, 205	Non-payment tax.

In Philadelphia, 26; in Bucks County, 25—total, 51.

*C.—Illegal votes cast for contestant, admitted in his brief.*

No.	Names of voters.	Place of voting.	Witnesses.	Page.	Remarks.
1	Frank McDonald	4th div., 22d ward.	F. McDonald .. J. R. White ..	324, 328	Probably a minor.
2	Frank Burns	5th div., 22d ward	F. Burns ..	314	Non-resident.
3	Chas. M. Burns, sr.	.....do .....	C. M. Burns, sr.	314	Do.
4	Chas. M. Burns, jr.	.....do .....	C. M. Burns, jr.	314	Do.
5	John Carson	10th div., 23d ward	John Carson ..	335	Non-payment tax.
6	Charles G. Hall	.....do .....	C. G. Hall ..	336	Fraud. nat. papers.
7	Edgar Adam	Newportville Bucks County.	E. Adam ..	290	Not in State long enough.
8	George C. Bond	Solebury, Bucks Co.	G. R. Lear .. R. L. Cope ..	292, 293	Do.
9	Thomas Farley	.....do .....	F. Farley ..	293	Do.
10	Robert Prior	Lower Wakefield, Bucks County.	C. Vansant .. R. Prior ..	294, 336	Do.
11	John Radford	.....do .....	R. Prior .. J. Radford ..	336, 355	Do.
12	William Kirkham	.....do .....	W. Kirkham ..	295	Do.
13	Sickler Griskler	Northampton, Bucks County.	H. Lefferts ..	297	Alien.
14	George Smith	Warrington, Bucks County.	Lydia Smith .. G. Smith ..	298	Minor.
15	Tilghman Gottschalk	New Britain, Bucks County.	R. Godehalk .. T. Godehalk .. E. M. Russell ..	291, 358	Do.
16	John Rafferty	Bristol	John Rafferty ..	184, 185	Alien.
17	Alex. P. Mercer	10th div., 22d ward	William Swemm ..	312	Fraud. nat. papers.
18	Thomas W. Finney	Bristol Township	J. S. Stackhouse ..	289	Alleged non-res'd't.
19	Two tickets folded together.	Falls Township	Lovett ..	290	
20	Do.	.....do .....	.....do .....	290	
21	One (improperly rejected) sticker.	Bristol	Riching ..	296	
22	Lewis Leisler	6th div., 22d ward.	Albright Clark ..	300, 301	
23	Jacob Moyer	.....do .....	.....do .....	300, 301	

*D.—List of persons who offered to vote for incumbent, and were improperly rejected.*

No.	Name of voter.	Place of voting.	Page.
1	Thomas McMann	Middletown.	301, 399, 405
2	Christ. Hollander	Lower Wakefield	294
3	Patrick Lee	9th division, 22d ward	315
4	Francis Roach	5th division, 22d ward	321, 406
5	Harper Yerkes	2d division, 23d ward	331, 332
6	Christian Schlitt	Middletown.	340
7	Thomas Boyle*	.....	.....
8	Patrick Conway*	.....	.....
9	Michael Preill*	.....	.....
10	Martin Hunt*	.....	.....
11	Charles McNally*	.....	.....
12	Charles McDermott*	.....	.....
13	John Sweeney*	.....	.....

\* See Brightly's testimony, on pages 364, 366, relative to 6th division, 22d ward.



E.—List of roters who offered to vote for contestant, and were improperly rejected.

No.	Name of voter.	Place of voting.	Page.	Remarks.
1	John W. Penn .....	4th division, 25th ward ..	73	Vote destroyed by officers.
2	George Weiss .....	Milford Township .....	19, 26	
3	Leidy Landis .....	Milford Township .....	19, 25	
4	Mahlon Fretz .....	W. Rockhill Township ..	30	

F.—Alleged illegal votes cast for contestant, denied in his brief, and not proved by the evidence to have been illegal.

No.	Name of voter.	Place of voting.	Page.	Remarks.
1	Samuel Ely .....	Upper Wakefield .....	295, 296	Attacked on residence.
2	Jacob Freeman .....	Northampton .....	27, 298	Alleged non-payment of tax.
3	Thomas Clayton .....	Lower Wakefield .....	337, 355	No proof for whom vote cast.
4	Yardley Tomlinson .....	Middletown .....	302, 337, 338	Perfect right to vote.
5	William T. Blakely .....	Middletown .....	338, 339	Had right to vote.
6	George S. Repplier .....	2d division, 22d ward ..	307	
7	Samuel S. White .....	2d division, 22d ward ..	308	
8	George Reilly .....	4th division, 22d ward ..	320, 321	
9	Joseph Applin .....	5th division, 22d ward ..	322, 323	Do.
10	John H. Budd .....	2d division, 23d ward ..	336	Do.
11	John Gardner .....	2d division, 23d ward ..	327	Do.
12	Robert Henry .....	2d division, 23d ward ..	328	Do.
13	Jonathan Walton .....	2d division, 23d ward ..	329, 334	Do.
14	William Cook .....	2d division, 23d ward ..	330	Do.
15	John Stout .....	Milford Township .....	198	Do.

G.—Votes cast for incumbent and charged as illegal by contestant, but in the judgment of the committee not clearly proved illegal by the evidence.

No.	Name of voter.	Place of voting.	Witnesses.	Page.	Remarks.
1	Thomas Gallagher ..	4th div., 22d ward. {	Alex. P. Keyser ..	114, 118, 123	Non-resident and fraudulent naturalization papers.
			Wm. Joyce .....		
			Edwin Markley ..		
2	James Owens .....	5th div., 22d ward. {	Geo. R. Krickbaum ..	120	Fraud't nat. papers.
3	Quiren Eckfeldt ....	8th div., 23d ward. {	G. R. Krickbaum ..	120, 121	Fraud't nat. papers.
			C. B. Guyger .....		
4	Jacob Gomeringer ..	9th div., 22d ward. {	W. Hergeshelmer ..	118	Non-resident.
5	John O'Brien .....	2d div., 22d ward. {	John O'Brien .....	81	Fraud't nat. papers.
6	Charles Hughes .....	6th div., 23d ward. {	Charles Hughes .....	112, 113	Non-payment of tax.
7	Samuel Getty .....	8th div., 23d ward. {	S. Getty .....	91, 369, 370, 97	Soldier.
			W. K. Pigott .....		
8	Patrick Ellison .....	8th div., 23d ward. {	Patrick Ellison .....	92, 97	Soldier.
			W. K. Pigott .....		
9	Michael Farrel .....	8th div., 23d ward. {	Michael Farrel .....	92, 97	Soldier.
			W. K. Pigott .....		
10	Hugh McLaughlin ..	8th div., 23d ward. {	Hugh McLaughlin ..	92, 97	Soldier.
			W. K. Pigott .....		
11	Edward Shields .....	8th div., 23d ward. {	Edward Shields .....	93, 97	Soldier.
			W. K. Pigott .....		
12	James Clary .....	8th div., 23d ward. {	J. Clary .....	93, 97, 370	Soldier.
			W. K. Pigott .....		
			Samuel Getty .....		
13	Peter Hobin .....	8th div., 23d ward. {	Peter Hobin .....	94, 97	Soldier.
			W. K. Pigott .....		
14	Peter Held .....	8th div., 23d ward. {	P. Held .....	94, 97, 369	Soldier.
			W. K. Pigott .....		
			Samuel Getty .....		
15	Charles Fisher .....	8th div., 23d ward. {	Charles Fisher .....	96, 97	Soldier.
			W. K. Pigott .....		
16	Herman Gaffkin .....	8th div., 23d ward. {	Herman Gaffkin .....	96, 97	Soldier.
			W. K. Pigott .....		
17	James Larkin .....	8th div., 23d ward. {	James Larkin .....	97	Soldier.
			W. K. Pigott .....		
18	James McGiven .....	8th div., 23d ward. {	W. K. Pigott .....	97, 369	Soldier.
			S. Getty .....		
19	Benjamin Knowles ..	8th div., 23d ward. {	W. K. Pigott .....	97, 369	Soldier.
			S. Getty .....		
20	James Britt or Butt ..	5th div., 25th ward. {	John C. Sees .....	226	Refused to answer election officers.
21	A. J. McLea .....	6th div., 25th ward. {	A. J. McLea .....	105, 6	Non-payment of tax.



G.—*Votes cast for incumbent and charged as illegal by contestant, &c.*—Continued

No.	Name of voter.	Place of voting.	Witnesses.	Page.	Remarks.
22	Joseph S. Eckley	6th div., 25th ward.	Joseph S. Eckley	106	Non-payment of tax.
23	Daniel Lennan	3d div., 25th ward.	Thomas Dickson	104	Non-resident.
24	Joseph Greer	4th div., 25th ward.	Joseph Greer	225	Alien.
25	John Murphy	4th div., 25th ward.	John Murphy	104	Personated.
26	James Keating	8th div., 22d ward.	J. Keating	366	Fraud't nat. papers.
27	Thomas McSorley	4th div., 25th ward.		111	
28	Jas. Fulham	2d div., 25th ward.		108	
29	Adam Pretty	2d div., 22d ward.	Louis Wagner	84, 85, 86	
30	John Gallagher	2d div., 22d ward.		85	
31	William Shipe		James Cressman Samuel W. Weiss. Isaac G. Gerhart.	22, 23, 26	Non-resident.
32	William Henry	Bensalem Townsh'p.	William Henry	168	Refused to answer.
33	Mich'l McNinney, jr.	Durham Township	Nicholas Gibney Levi Black Exhibit No. 23.	208, 209, } 235 }	Fraud't nat. papers.
34	James Cowley	Durham Township	Nicholas Gibney Levi Black	161, 209, } 235 }	Fraud't nat. papers.
35	Thomas Coyle	Durham Township	Thomas Coyle	207	Fraud't nat. papers.
36	William Gregg	Durham Township	A. S. White S. A. Needl	177, 181	Non-resident.
37	John M. Hooper	Falls Township	Theo. F. Burton	173	Non-resident.
38	David Green	Falls Township	David Green	180	Non-payment of tax.
39	Thomas B. Jones	Morrisville Borough	Thomas B. Jones	178	Non-resident.
40	Wm. Vansant, No. 1	Bristol Borough	J. S. Tomlinson	182	Non-payment of tax.
41	John Casey	Bristol Borough	John Casey	187	Fraud't nat. papers.
42	Theodore Baker	Bristol Borough	Theodore Baker Andrew Schaffer	173, 175	Alien.
43	Edmund C. Wells	Southampton Twp.	Edmund C. Wells	189	Non-payment of tax.
44	Joseph Drum	Northampton Twp.	Joseph Drum	191	Fraud't nat. papers.
45	Nicholas Hayden	Northampton Twp.	Jesse B. Twining Charles Craven	192, 199	Fraud't nat. papers.
46	John D. Erwin	Northampton Twp.	Jesse B. Twining Charles Craven	192, 200	Non-resident.
47	John McAvoy	Northampton Twp.	John McAvoy	193	Fraud't nat. papers.
48	Anthony Storm	Nockamixon Twp.	S. A. Smith Antoin Storm	202, 204	Non-payment of tax.
49	Levi M. Pickle	Bridgeton district.	S. A. Smith Isaac McCarty S. C. Purcell	202, 206, } 209 }	Non-payment of tax.
50	Lawrence Senter	Warrington Twp.	Lawrence Senter Geo. M. Garner	211, 212	Non-resident.
51	Peter Higgins	Upper Makefield.	A. Williams T. J. Doan	213, 214	Non-resident.
52	Samuel Amey	New Hope Boro'	Jacob Magill W. P. Magill John Pidcock	215, 217	Non-resident.
53	Jacob Bratzen	New Hope Boro'	John Magill John Pidcock	215	Alien.
54	Cha's Montgomery	Bensalem	C. Montgomery	168	No tax.

## MINORITY REPORT.

April 4, 1870.—Mr. Randall, from the Committee of Elections, submitted the following as the views of the minority.

The majority of the sub-committee of the Committee of Elections have reported to the House (see report No. 50) that in the above case, in their judgment, Caleb N. Taylor, the contestant, received a legal majority of 72 votes over John R. Reading, the returned member from the fifth congressional district of the State of Pennsylvania for the forty-first Congress.

I differ from the conclusion arrived at by them, and proceed to state, in detail, the points of difference.

## 1.—COLONIZER VOTE IN MILFORD TOWNSHIP, BUCKS COUNTY.

I think the committee erred in charging the votes in appendix of report, Schedule B, from number 28 to number 32, inclusive, *five votes*



as *illegally* cast for the sitting member, to wit: the names of *Henry Miller, John Heller, Enos Wolf, Isaac Blank, Henry Kresimer*. There is no proof that they voted anywhere, and certainly none that they voted in Milford Township. Alkanus Markley, who admits himself to have been a colonizer, and to have voted, distinctly states that he does not know that any of the five voted; while Stephen Ortt and Peter Kline (all witnesses for the contestant) testify to the same effect. It is nowhere shown that either of these five persons voted, but is distinctly sworn to by the above-named witnesses, who were about the polls *all day*, and who *knew the men*, that they did not *see* or *know* of any of them voting. Had these men voted, it could have been readily shown by the contestant filing of record a certified copy of the list of voters of said township. In the absence of this list (filed in the case of other precincts or divisions, where illegal votes were charged against the incumbent by the contestant) and of any testimony in any way connecting these names with the fact of voting, these five votes are wrongly charged against the sitting member. These five votes, deducted from the 72 alleged by the majority of the committee to be the contestant's legal majority, reduce that alleged majority to 67.

The following testimony is all that bears upon the question of these five votes excepted to, and on which the majority of the committee resolved to charge these against the sitting member.

Testimony, pp. 15 and 16:

ALKANUS MARKLY, the above-named witness, being duly sworn according to law, deposes and says:

I live in Upper Hanover Township, Montgomery County; I have lived in Montgomery County about twenty-two years. There were six of us came from Montgomery County into Bucks County, at the last October election, for the purpose of voting. They were myself, Henry Garis, *Isaac Blank, John Heller, Henry Wismer, Enos Wolf*. *Henry Miller* was also one of the party; they came from the neighborhood of Hoppenville, Montgomery County; we came to Gearysville. Gearysville—I don't know—I think is in Milford Township; I don't know whether the whole party voted; I did not see them vote; I did not see any one put in a ticket; I did vote; I voted for Reading for Congress; I don't know the persons who gave tickets to the other parties; I came over to make my home there, to work at cigars. \* \* \*

Question. Did you mean, in answer to Mr. Simpson's question, to say that the whole of this party came to Gearysville to work at cigar-making, or to vote in Milford?—Answer. They did not all come over to work at cigars, but I don't know whether they came to vote. I came over to work and to vote. The ticket I voted was in German, and I cannot read German—I can read English. When I got my ticket I opened it and it was German. The person who gave it to me said it was for Dr. Reading. \* \* \*

Q. Did you not tell Mr. Yardly that you saw these persons vote, and that Mr. Hoffman gave them the tickets that they voted?—A. I only said that I saw Mr. Hoffman give them the tickets. Mr. Hoffman's name is Joseph.

Testimony, p. 27:

STEPHEN ORTT, a witness called by contestant to be examined under twenty-sixth specification, being duly affirmed, says:

I reside in Milford Township, Bucks County. I voted at the general election in October last, in Milford.

Question. Have you any knowledge of any one voting at said election who was not qualified by law to vote?—Answer. No, sir.

Q. Have you any knowledge of any one being induced to come into Milford Township to vote at said election?—A. No, sir.

Q. Don't you know, Mr. Ortt, of parties coming from Montgomery County to vote at that election?—A. No, sir.

Q. Do you know *Henry Miller*, residing in Montgomery County, a teacher?—A. I do.

Q. Do you know of his being induced to come from Montgomery County to the Milford election?—A. No, sir. I don't know whether he voted. He lives in Montgomery County, either in Malborough or Upper Hanover Township. He has lived there in Montgomery County as long as I know him. I know *John Heller*. He lives in Montgomery County, in Upper Hanover Township. He has lived there between two and three years. I do not know whether he voted. I do know *Enos Wolf*. He resides in



Montgomery County now. He has resided there about two years. I don't know of a Mr. Wolf's voting at the election. I know *Isaac Blank*. He lives in Montgomery County. He has lived there about eight years, with his father. I do not know of his voting at the October election. I do know *Henry Kresimer*. He resides also in Montgomery County, Upper Hanover Township. I do not know whether he voted at the October election. \* \* \* \*

Testimony, p. 28:

PETER KLINE, a witness called by the contestant to be examined under same specification, being affirmed, says:

I know Henry Miller, John Heller, Isaac Blank, Alkanus Markley, and Enos Wolf. Came from Montgomery County into Bucks County to vote, as far as I know. I don't know when they came from Montgomery County to Bucks County to vote. They came over to vote; I don't know what for. I heard it said that they had more in Montgomery County than they wanted; and that is the reason why they came over. I have not heard it said which party had enough in Montgomery County. I know these men. I reside about two miles from Gearysville.

O. What were the politics of the men spoken of?

(Objected to.)

A. I don't know; can't say.

Cross-examined by Mr. COPE for incumbent:

All I know about these men is what I heard other people say.

Question by Mr. THAYER:

A. No, sir; I did not see them around the polls; I voted late.

On such testimony as this, five votes are deducted from the vote returned for the sitting member.

## 2.—PAUPER VOTE IN BUCKS COUNTY.

I think the majority of the committee erred in charging the votes, in appendix of report, Schedule A, from number 14 to number 16, inclusive, three votes, as *illegally* cast for the sitting member, to wit: the votes of Christopher Ratican, Henry Alhouse, and Frederick Frash. Although those votes were admitted as against the sitting member in his brief, yet, at the time of that admission, the conclusive opinion of the Hon. B. H. Brewster, late attorney general of Pennsylvania, in a contested election case in the senate of Pennsylvania, had not been promulgated. On the adjudication of said case, the opinion of Mr. Brewster was accepted as determining the legality of this class of voters, and the votes were retained as *legal*. I submit in this connection this luminous opinion:

### EX-ATTORNEY BREWSTER, ON THE FINDLAY-SCULL CASE.

Third. Is a poor man (pauper in a county poor-house) a qualified elector in the poor-house election district, although said poor man (pauper) had been sent there from another election district, provided he is a white freeman, a citizen of the United States, and has resided in this State at least one year, and in the election district where he offers to vote at least ten days immediately preceding such election, and within two years paid a State or county tax, which shall have been assessed at least ten days before the election, and has been registered?

Answer. Such a person is a qualified elector and can vote, and his vote cast is a lawful vote and as good as any man's vote, and it ought to be so. The Constitution establishes this, and it does not disqualify him because he is poor. That does not deprive him of his freedom or his citizenship.

They are amenable to the law, and being so, upon the very fundamental principles of our government have a right to be represented, and to say who shall make the laws. It is not property or poverty that rules here. It is the man, responsible to God, and responsible to the law. To say otherwise would make poverty worse than a crime. The pauper is bound by every law upon the statute book, and is protected by every provision of the Constitution, as much so as the wealthiest, wisest, or most successful man in the community. Sickness, the calamities and accidents of life, may reduce men to this sad condition. That is bad enough. The law never intended to add to his



miseries by making him the only slave that remains in our republic. All the duties of life bind him: he can make a contract, he can be obliged to testify, he can marry, he can sue and be sued, he is only restrained and bound by rules as every one is who lives in any institution. Persons in hospitals, asylums, factories, homes for disabled soldiers, public works, government shops, and all kinds of public and eleemosynary institutions, as well as private establishments, are bound by fixed rules, that are enacted for the preservation of good order, to maintain discipline, and carry out the purposes of the establishments. This is all that he is subjected to, and these rules and the restraints of the house he can relieve himself from at any moment by asking for his discharge. The poor-house is his residence; it would be there that process of law, criminal or civil, would be served upon him; and it is from that residence he may vote, provided he has lived there ten days preceding the election and conformed to the requirements of the law. If to receive public support would be legal cause of disqualification, we must not forget that even now a large number of white and black citizens of the southern portion of this nation are still receiving and levying upon the supplied bounty of the government. What would be their condition? For some of those who have received and still receive that bounty were once the wealthiest and best bred, and the most accomplished, and sometimes reputed the wisest people in this region. By the calamities of war they are reduced to want; but God forbid that they or any one should by any calamity be stripped of their right of manhood and brutalized down to that slavery from which we have been, by God's providence, all emancipated.

I am, respectfully,

BENJAMIN HARRIS BREWSTER.

In this connection I may add a portion of my report made in the Foster and Covode case, bearing on this question, and I reiterate with the more force, since Attorney General Brewster's decision:

In the case of this class of voters the objection is not sustained, we find, by any law of Pennsylvania, nor is it sustained by the action of the House of Representatives in the contested election case of *Koontz vs. Coffroth*, thirty-ninth Congress, first session, (report No. 92, vol. 1, of House Reports, 1865-'66.) In the majority report, which was adopted, and ousted the sitting member, it was held that this kind of vote could "not be deducted from the count of the sitting member. Each State frames its own laws for the maintenance and care of its poor. The laws provide protection for the poor, who, by reason of age, disease, infirmity or other disability," become unable to work. With regard to the elective franchise by such, the laws of Pennsylvania are silent. As they are not expressly deprived of the right, we cannot see why the unfortunate, provided for by the public, may not vote as if provided for by a parent or a son; certainly not, until the authorities of Pennsylvania shall have decided for themselves the law, for which they have had frequent opportunities. Therefore we *here* make no deduction from the count of the sitting member.

These three votes deducted from the sixty-seven remaining of the alleged majority of votes for contestant, after deducting the vote known as the colonizer vote, reduces that majority to sixty-four votes. The current of congressional and Pennsylvania State precedents, supported by the above concise and clear opinion of Mr. Brewster, warrants the reception of their votes.

### 3.—SOLDIER VOTE REJECTED IN THE EIGHTH DIVISION TWENTY-THIRD WARD.

Since the action of the Senate of the United States on the 1st day of April, 1870, on the admission to a seat in the Senate of General Ames, who at the time of *his* election (in the language of the majority of the committee in this case as touching this soldier vote) was not in Mississippi "*by his own volition, but by command of his military superiors*," I am compelled, therefore, to say that I cannot coincide with the majority of the committee in their rejection of seven of the votes, known as the soldier vote, in the eighth division of the Twenty-third ward, to wit: those of *Richard O'Leary, Owen Sheridan, Robert Armstrong, John Kennedy, John Laffey, Frederick Kopp, and Lewis Bingham*.

Of this number *John Kennedy* is *undoubtedly a good vote*. He lived in the division when he enlisted, and had been living there two or three weeks, and was a single man. (Testimony, p. 96.)



*Lewis Bingham* is not shown as voting at all. No proof whatever that he did, and is not on the list of voters as filed of record by contestant. (P. 266 of testimony, Ex. No. 29, "H. H. H.")

*Richard O'Leary* was a single man, an enlisted soldier, assessed in that division, had paid taxes, and "resided at the arsenal during the period of his enlistment, and until his discharge." His enlistment did not disfranchise him. If he could not vote where he did, then the best legal minds in the Senate are in error in regard to the legality of the election of General Ames. (See Getty's testimony, p. 369.)

*Owen Sheridan* had been for six years continuously in the service of the United States, and was assessed and had paid taxes in the division in which he voted; was married, and wife lives in same division.

*Robert Armstrong* was assessed and paid taxes in the division in which he voted. The objection to this vote is because of his service as a soldier of the United States.

*John Laffey* is undoubtedly a good vote. John Laffey (page 97) voted for Reading; seven years in service continuously; enlisted originally in Boston for five years; *re-enlisted* from eighth division of Twenty-third ward; single man at time of enlistment; married for six months from October last; naturalized February 25, 1868—*soldier's papers*. (Samuel W. Getty, p. 369, swears that immediately after Laffey got his papers, he re-enlisted.)

*Frederick Kopp* was assessed and paid taxes in the division in which he voted; was a soldier in the service of the United States. This service, it is said, made him a non-resident for the purpose of voting. This is the only ground on which his vote is asked to be rejected.

I cannot agree that any of these votes should be rejected. In admitting any of the twenty votes thus attacked, you must admit all. You cannot admit a part and reject a part. The integrity of these voters is nowhere impeached. It is no reason for disfranchisement that these men were soldiers, and lived at a United States arsenal. They were what is known as the "permanent party" at a United States station; they had been there for years, enlisting and re-enlisting, marrying and raising families. Are such men to be disfranchised?

In *Bowen vs. Given*, Justice Cartter, of the District of Columbia, held "that an officer or enlisted man neither gained nor lost a residence; his residence was where he enlisted." In view of this decision, I insist that when the term of enlistment expired, these soldiers, having the *animus manendi*, gained a residence *eo instanti* in this division, and it was their residence at the time of their re-enlistment; and being so, they were not disqualified by reason of non-residence. This was likewise the decision in the case of General Ames, above referred to. I cannot reject the foregoing seven votes. I retain the whole twenty soldier votes in the return of votes for the sitting member.

Deducting, then, these seven votes from the sixty-four remaining of the contestant's alleged majority, reduces that majority to fifty-seven votes.

#### 4.—THE UNASSESSED VOTE IN THE FOURTH DIVISION OF THE TWENTY-FIFTH WARD.

The majority of the committee err in stating in their report (page 8) that the incumbent "admits that sixty-one persons who were not assessed in this precinct voted at the October election in 1868." The incumbent does not admit that number, as he has clearly shown by the accompanying evidence that at least ten of the names alleged to be "unas-



essed voters" were, in point of fact, not only on the regular assessment, but on the registered list of taxables, but owing to the utter incompetency of David Dryburg, the names on the list were not found, as they should have been, and properly marked as voting. In fact, he seemed to content himself with a hasty glance, and if not able to find the names at once, he added them as "unassessed voters."

The contestant asked in this case that the *entire poll be thrown out*. But the committee concluded, unanimously, that the poll should be purged, and consequently proceeded to say which of the following sixty-one unassessed votes were legal votes and should be counted. Those marked with a star (\*) the majority admitted should be counted as legal votes. Those marked with two stars (\*\*) I submit that the evidence adduced by incumbent clearly proves to be legal votes, and should be allowed. Those marked with three stars (\*\*\*) I do not think incumbent has proved, and therefore they must be charged against him. I annex the names of the "unassessed voters"—marked as admitted by the majority of the committee, marked as proved in my opinion, and marked as not proved in the opinion of the whole committee.

*List of voters, fourth division Twenty-fifth ward, whose names do not appear on the list of taxables.*

** 13 Patrick Phillips.	*324 James Swan.
* 23 Dennis Harkins.	*333 Peter Phillips.
* 31 Thomas Madden.	**344 Patrick McGee.
** 50 Edmond Parson.	**350 James McLaughlin.
* 61 Joseph Hedding.	*353 James O'Donnell.
* 62 Michael Fleming.	**358 Patrick Gillroy.
* 66 John Robbins.	*360 Morrissey Heron.
** 74 Barney McElorey.	***362 Christopher Mulveil.
* 80 James Hilburn.	**374 Urias Pearson.
** 94 Francis Mullochell.	*379 Dennis Duffy.
**105 John Quinn, voted No. 89.	**380 John Harison.
**110 Daniel Mooney.	**393 John McNamee.
**128 John Caughey.	*413 P. Boyle, voted No. 329.
**134 Lewis Pryor.	*424 Thomas McSorley.
**140 Patrick Kathgau.	**445 John McDevitt.
**143 Thomas Lawler.	*446 Thomas Duffy.
**164 Philip Monaghan.	*457 Thomas McCusker.
*166 Daniel Hagerman.	*463 James McDonough.
**171 Edward McCafferty.	**472 Anthony Tigh.
**176 Wilson Larue.	**475 James Conway.
**180 John McWilliams.	**481 James McAran.
**198 Patrick Slaven.	*490 George Snyder.
*216 Samuel Ross.	**498 Edward Porterfield.
*241 James Woonan.	*508 Mitchell Cornell.
*243 William Yanan.	*509 William McIntire.
**245 Felix O'Toole.	*511 Peter Steelman.
*272 Edward Hanzgty.	**533 John Carberry.
***282 Michael McGrodey.	*538 Dolty Leonard.
**289 William Gallagher.	*548 Thomas Caughy.
***307 Anthony McCally.	*551 Patrick Connelly.—61 names.
*310 Francis Harney.	

We have here twenty-nine votes admitted to be legal by a majority of the committee, leaving thirty-two to be accounted for by the incumbent. (The majority of the committee say thirty-three; but this is an error, as they supposed they had counted Hillburn, No. 80, whom they allow as legal, and this makes twenty-nine allowed as legal, instead of twenty-eight, and the incumbent must account for the remaining thirty-two, or be charged with them.) Of this thirty-two I maintain he has clearly proven and accounted for twenty-seven, which bear the double asterisk as above; and these are to be allowed, as will be seen by the accom-



panying evidence touching each individual case. Those marked with three asterisks are admitted by me as not proven by the evidence of the incumbent, to the number of five, to wit: No. 110, Daniel Mooney; No. 282, Michael McGrodey; No. 307, Anthony McCally; No. 362, Christopher Mulveil; and No. 472, Anthony Tigh.

Thus, this poll purged, legally purged, makes a charge against the sitting member of five instead of thirty-three, as charged by a majority of the committee. The testimony bearing on these individual cases is as follows:

No. 13. *Patrick Phillips* is undoubtedly a good vote. (See his testimony, page 375:)

PATRICK PHILLIPS, a witness produced, sworn, and examined on the part of incumbent, deposes and says:

My name is Patrick Phillips. At the time of the last October election I lived at 1514 *Salmon street*, in the fourth division of the Twenty-fifth ward. I have lived in the same house going on twenty-six years. I own the house I live in. I voted in that division at the last October election. I am a citizen of the United States and of the State of Pennsylvania. I had paid a State or county tax within two years of that election. I have been a voter since 1841.

On the assessed list (see Ex. H. 4, page 439) as *James Phillips*, 1514 *Salmon street*. On the list of taxables (see Ex. 26-3, page 259) as *Joseph Phillips*, 1514 *Salmon street*, and marked as voting.

There is a *Patrick Phillips* on the list of taxables, at page 258, but he is not marked as voting.

*Patrick Phillips*, who testifies as above, is, by mistake, assessed as James and registered as Joseph, the residence opposite each name being the same—1514 *Salmon street*. He had been in the country thirty-five years.

No. 50. *Edmund or Edward Parson*. Undoubtedly a good vote. (See his testimony, page 374:)

EDMUND PARSONS, a witness produced, sworn, and examined on the part of incumbent, deposes and says:

My name is Edmund Parsons. At the last October election I resided at 1400 *Salmon street*. I had lived there a month and a half before the election; from about the 10th of August preceding. I voted in the fourth division of the Twenty-fifth ward. I am American born. I had paid a State or county tax within two years of that election. I am a native of Pennsylvania and have lived here all my life. I have been a voter about four years. My residence was vouched for by James Harkins.

Cross-examined:

I lived in *Salmon* above *Maple*, in the sixth division of the Twenty-fifth ward, before I moved to 1400 *Salmon street*. I was assessed there. At the time I offered my vote I was not sworn. My voucher was sworn. I did not produce my tax receipt. I was not asked for it, but I had one.

His name was added to the registered list of taxables.

No. 94. *Francis Mulvahill*. Undoubtedly a good vote. (See testimony, page 376:)

FRANCIS MULVAHILL, a witness produced, sworn, and examined on the part of incumbent, disposes and says:

My name is Francis Mulvahill. At the last October election I lived at 1508 *Salmon street*, in the fourth division of the Twenty-fifth ward. I have lived there since 1847, and voted there at that election. I am a citizen of the United States and of the State of Pennsylvania, and a property-holder. I had paid a State or county tax within two years previous to last October election. (Tax receipts produced.) I have been a voter in that division for twenty years.

This voter the committee in its report (page 8, fourth line from the bottom) says voted on a fraudulent tax receipt. *He was a property-holder.*



No. 74. *Barney McElorey*. Undoubtedly an error. No such man voted at all. No such man is on the list of voters of this division as filed by contestant, on page 246; nor is the name anywhere on the registered list of taxables, page 249. This cannot in justice be charged to the incumbent. *It is clearly an error.*

No. 128. *John Caughey*. Undoubtedly a good vote. (See his testimony, page 386:)

JOHN CAUGHEY, a witness produced, sworn, and examined on the part of incumbent, deposes and says:

My name is John Caughey. At the last October election I resided in the fourth division of the Twenty-fifth ward. I have resided there eight months the 6th of this month. Previous to that I resided in Ann street, in the sixth division of the Twenty-fifth ward, for about three years. I voted in the fourth division of the Twenty-fifth ward at the last October election. I heard every one say I was on the assessed list. I cannot read. I am a naturalized citizen of the United States, and of the State of Pennsylvania. I have not my papers here with me. I have been naturalized about eleven years. I paid a State or county tax within ten or twelve days previous to the last October election.

Had been in the country eighteen years.

No. 184. *Lewis Pryor*. Undoubtedly a good vote. (See his testimony, page 381:)

LEWIS PRYOR, a witness produced, sworn, and examined on the part of incumbent, deposes and says:

My name is Lewis Pryor. At the last October election I resided at 1519 Edgemont street, in the fourth division of the Twenty-fifth ward. I have lived there going on four years. I voted in that division at the last October election. That was my first vote. I voted on age; I was twenty-two years old on the 19th day of January, 1869. I am native-born. My vote was not challenged. My father was at the polls to vouch for my age. My father was not questioned to my age. The officers inside knew my age. I had a brother who voted. He was two years older than me. I was born in 1846; I mean to say in 1847; it was near 1846. My mother told me when I was born.

Added to the registered list of taxables, and marked as voting *on age*. (Page 358.) Also, see Fitzpatrick's testimony on this page, 385.

No. 140. *Patrick Kathgan*. Undoubtedly a good vote. (See his testimony, page 373:)

PATRICK KATHGAN, a witness produced, sworn, and examined on the part of the incumbent, deposes and says:

My name is Patrick Kathgan. At the last October election I lived at 1422 Edgemont street. I voted in the fourth division of the Twenty-fifth ward. I am a citizen of the United States and of the State of Pennsylvania. I have paid a State or county tax within the last two years. I have been living in that division about five years.

This is a voter whom the committee (on page 8 of their report, seventh line from the bottom) say voted on a fraudulent tax receipt. He swears as to having paid tax in 1867 as well as 1868.

No. 143. *Thomas Lawler*. Undoubtedly a good vote. (See his testimony, page 373:)

THOMAS LAWLER, a witness produced, sworn, and examined on the part of the incumbent, deposes and says:

My name, Thomas Lawler. I live at No. 1421 Almond street, and I lived there at the last October election. I voted in the fourth division of the Twenty-fifth ward. I have lived in that division over three years. I am a citizen of the United States and of the State of Pennsylvania. I have paid a State or county tax within two years. I have been a voter about eleven years.

Cross-examined:

I have paid my tax on the 29th April, 1868. (Tax receipt produced, dated April 29, 1868, for property 1421 Almond street, and for personal tax.) There was a man sworn for me when I voted; I was not sworn. I was challenged on my residence; I produced



my tax receipt, but it was not taken. I also produced my naturalization papers, but the election officers said they were not necessary, as I was challenged on residence. I was naturalized about eleven years ago, in Philadelphia. I have lived in Philadelphia ever since I was naturalized. I landed there on my arrival in this country, and have never lived anywhere else.

No. 164. *Philip Monaghan*. Undoubtedly a good vote. (See his testimony, page 375:)

PHILIP MONAGHAN, a witness produced, sworn, and examined on the part of incumbent, deposes and says:

My name is Philip Monaghan. I resided at the corner of William and Salmon streets, at No. 1552 Salmon street, at the last October election. I was born there. I voted in the fourth division of the Twenty-fifth ward at the last October election. I am a citizen of the United States and of the State of Pennsylvania. I voted on age last October. I was twenty-one years of age on the 28th day of September, 1868. I was sworn as to my age.

No. 171. *Edward McCafferty*. Undoubtedly a good vote. (See his testimony, page 377:)

EDWARD MCCAFFERTY, a witness produced, sworn, and examined on the part of incumbent, deposes and says:

My name is Edward McCafferty. At the last October election I lived at No. 1404 Salmon street, in the fourth division of the Twenty-fifth ward, and had lived there nearly a year previous to that election. I voted in that division last October. I am a citizen of the United States and of the State of Pennsylvania. I had paid a State or county tax within two years previous to said election. I have been a naturalized citizen since 1860. My vote last October was my first in that division and ward. I have lived in Pennsylvania; it is my home and has been. I have lived in Clearfield street, in the sixth division of the Twenty-fifth ward, previous to removing to Salmon street.

Regularly assessed in the sixth division of the Twenty-fifth ward, (see record, page 434,) "Clearfield street, north side, Edward McCafferty, laborer."

No. 176. *Wilson Larue*. Undoubtedly a good vote. (See his testimony, page 379:)

WILSON LARUE, a witness produced, affirmed, and examined on the part of incumbent, deposes and says:

My name is Wilson Larue. At the last October election I lived at 1040 Somerset street, in the fourth division of the Twenty-fifth ward. My family had lived in Somerset street for about two weeks before the last October election. When I came to run on the railroad, I boarded with Mrs. Brown, in the same division of that ward. I voted in that division at the last October election. I was assessed in that division. I had paid a State or county tax within two years preceding the last October election. Before moving into this ward, I had lived in Montgomery County, Pennsylvania, for four and a half years.

Was assessed and vouched for by Charles Olden.

No. 180. *John McWilliams*. Undoubtedly a good vote. Was on the regular assessment, and on the list of taxables. Voted and resided in the division *twenty* years. Naturalized *sixteen* years; property-holder, and paid taxes. (See his testimony, page 379:)

JOHN MCWILLIAMS, a witness produced, sworn, and examined on the part of incumbent, deposes and says:

My name is John McWilliams. At the last October election I lived at 1420 Edgemont street, in the fourth division of the Twenty-fifth ward, and had lived there for twenty years previous to that election. I was a property-holder, and was assessed in that division. I voted in that division at the last October election. I am a citizen of the United States and of the State of Pennsylvania. I had paid a tax within two years previous to the last October election. I was naturalized in 1852. (Naturalization papers produced.) I have been a voter in the fourth precinct of the Twenty-fifth ward since I was naturalized, viz: for sixteen years.



No. 198. *Patrick Slaven*. Undoubtedly a good vote. (See his testimony, page 378:)

PATRICK SLAVEN, a witness produced, sworn, and examined on the part of incumbent, deposes and says:

My name is Patrick Slaven. I resided at 1411 Almond street at the last October election, in the fourth division of the Twenty-fifth ward. I moved there last June. I had lived in Edgemont street, in the same ward, before I moved there. I voted in that division and ward at the last October election. I am a citizen of the United States and of the State of Pennsylvania. I had paid a State or county tax within two years previous to the last October election. I am a naturalized citizen. I was naturalized on the 26th day of September, 1868.

I lived on Edgemont street about three months; before that, I lived on Somerset street. To the best of my opinion, I lived six or seven months on Somerset street. I believe Edgemont and Somerset streets are both in this ward. It will be nine years some time this month since I have been in this country. I cannot exactly say how old I am, but to the best of my opinion I am between twenty-seven and twenty-eight years old now. Peter Matthews was my voucher when I was naturalized. I had known him for seven or eight years—nearly ever since I had been in the country. I paid my tax the day before the election. I could not say the name of the man to whom I paid my tax. It was to a man on Frankford road, near Ann street. There were a number of persons there paying their taxes at the same time.

He was vouched for by *Charles Fay*.

No. 334. *Patrick McGee*. Was on the regular assessment list and list of taxables, as Patrick McGeehan, his correct name. Marked as voting. (Counsel for contestant admitted that both names were intended for the same man.) Undoubtedly a good vote. (See his testimony, page 386:)

PATRICK MCGEEHAN, a witness produced, sworn, and examined on the part of incumbent, deposes and says:

My name is Patrick McGeehan. At the last October election I resided at 1117 Somerset street, in the fourth division of the Twenty-fifth ward. I am on the regular assessment list. I voted in that division at the last October election. (On the list of voters of the fourth division of the Twenty-fifth ward the witness is written down as Patrick McGee, at No. 344, when it should have been his right name of Patrick McGeehan.)

No. 350. *James McGlaughlin*. Undoubtedly a good vote. He was on the list of taxables as *William McGlaughlin*, and marked as voting. Lived in division eighteen years; voted there. Is a property-holder, and paid taxes. (See his testimony, page 374:)

JAMES MCGLAUGHLIN, a witness produced, sworn, and examined on the part of incumbent, deposes and says:

My name is James McGlaughlin. I resided at 1411 Almond street at the last October election. I have been living in this division eighteen or twenty years. I voted in the fourth division of the Twenty-fifth ward at the last October election. I am a citizen of the United States and of the State of Pennsylvania. I am a property-holder, and have paid a tax within two years previous to the last October election. I have been a voter since 1852.

On the regular assessment list, (See Ex. H. 4, page 430,) at No. 1411 Almond street, is the name of *William McLaughlin*. On the registered list of taxables (See Ex. 26-3, page 256) is the name of *William McLaughlin*, 1411 Almond street, marked as voting. They are one and the same person.

No. 358. *Patrick Gillroy*. An error in the clerk in transcribing name. Should have been *Kilroy*. There is no such name as *Patrick Gillroy*, either on the regular assessment list, or on the list of taxables of this division, nor is there *any such name* added to the list as having voted. But there are *two* Patrick Kilroys on the regular assessment list; one at 1139 Henson street, (page 428,) and one on Somerset street, (page 429;) and on the registered list of taxables (page 254) is Patrick Kilroy,



No. 1139 Henson street, and Patrick Kilroy, 1128 Somerset street, both marked as voting. This is undoubtedly a good vote, the error being in transcribing the name to the list of voters. (See his testimony, page 379:)

PATRICK KILROY, a witness produced, sworn, and examined on the part of incumbent, deposes and says:

My name is Patrick Kilroy. At the last October election I resided at No. 1128 Somerset street, in the fourth division of the Twenty-fifth ward, and had lived there ten years. I voted in that division at that election. I am a citizen of the United States and of the State of Pennsylvania. I was naturalized in 1859. (Papers produced.) I had paid a State or county tax within two years previous to the last October election. I have paid a tax every year since I have been a voter. I have been voting in this division nine years.

No. 374. *Urias Pearson*. Undoubtedly a good vote. (See testimony, page 375:)

URIAS PEARSON, a witness produced, sworn, and examined on the part of incumbent, deposes and says:

My name is Urias Pearson. I resided at 1453 Salmon street at the last October election, and had resided there for eighteen months previous to that election. I voted in the fourth division of the Twenty-fifth ward. I am a native-born citizen. I had paid a State or county tax within two years previous to the last October election; (tax receipt produced, dated October 10, 1868, and signed by John C. Sees.) My vote was not challenged, but my residence was vouched for. Mr. Thomas Fay vouched for me. I was not sworn. I produced my tax receipt and a discharge from the United States Army. I was assessed on the extra assessment list previous to the last October election. I lived in the same division of the same street at the time of the assessment and of the election. I believe Mr. Fay was sworn for me at the time I voted.

No. 445. *John McDevitt*. Undoubtedly a good vote. (See his testimony, page 375:)

JOHN McDEVITT, a witness produced, sworn, and examined on the part of incumbent, deposes and says:

My name is John McDevitt. I resided at No. 1540 Richmond street, in the fourth division of the Twenty-fifth ward, at the last October election. I had resided there about ten years and voted there at that election. I am a citizen of the United States and of the State of Pennsylvania, and a property-holder. I had paid a State or county tax within two years of that election. I have been a voter about ten years. My vote was not challenged. I know Thomas Barrett.

The committee in its report, page 91, says: "John McDevitt, called by incumbent, did not prove the unassessed vote in that name, for there are three of that name, including the witness, and four voted." This is an unintentional error, as by reference to the list of taxables, pages 256-257, it will be seen there are *four* John McDevitts, and four registered as voting.

No. 475. *James Conroy*. (Error of the printer. Should have been *Conroy*.) Contestant's counsel admits that these persons are one and the same; that the Conroy on the list of unassessed voters is the same Conroy who appears on the regular assessment, *not marked as voting*. This is undoubtedly a good vote. (See testimony, page 391:)

JAMES CONROY, a witness produced, sworn, and examined on the part of incumbent, deposes and says:

My name is James Conroy. At the last October election I resided at No. 1523 Belgrade street, in the fourth division of the Twenty-fifth ward. I had lived there for a year previous to that election. I voted in that division at last October election. I have been voting in that ward about eleven years. I paid taxes last year before the October election. I was on the regular assessment, and read my name on the list outside the polling place. There is no other voter of the name of Conroy living at 1523 Belgrade street, except Martin Conroy, my father. (The list of voters at No. 334 shows the name of James Conroy as voting; by the book marked "C C C," James Conroy, 1523 Belgrade street, appears on the regular assessment and not marked as voting, and on the list of



the added unassessed voters appears the name of James Conroy, 1523 Belgrade street, as having voted.)

No. 481. *James McArán*. Undoubtedly a good vote. (See his testimony, page 379:)

JAMES D. MCARAN, a witness produced, sworn, and examined on the part of incumbent, deposes and says:

My name is James D. McArán. At the last October election I resided at No. 1415 Salmon street, in the fourth division of the Twenty-fifth ward. I had lived there about three months previous to that election. I voted in that division at that election. I had paid a State or county tax within two years previous to that election. I am a native-born citizen. I was living in that division in pursuance of my lawful calling, and am living there yet. I am conductor on the railroad. I was not assessed in that division. I was challenged on residence at the last October election. Francis McDonough vouched for me.

Cross-examined:

I was not sworn when I voted, but my voucher was. I did not produce a tax receipt. I had paid a tax two weeks preceding the October election of 1867. I paid that tax in the Fifth ward of the city of Philadelphia. I came home from West Virginia, where I had been working, about two or three months before the election of 1867, and had boarded at Sixth and Powel streets. I was on the extra assessment in the Fifth ward at the October election in 1867.

No. 498. *Edward Porterfield*. Undoubtedly a good vote, although the committee charge him, on page 8 of report, as having a fraudulent tax receipt. How they can establish such a charge from his evidence which follows, (see pages 376-77,) is passing strange.

EDWARD PORTERFIELD, a witness produced, sworn, and examined on the part of incumbent, deposes and says:

My name is Edward Porterfield. I resided at No. 1116 Frémont street, at the last October election, and had lived there for nine years and a half previously. I voted in the fourth division of the Twenty-fifth ward at that election. I am a citizen of the United States, and of the State of Pennsylvania. I had paid a State or county tax within two years previous to the last October election. I have been a voter since 1854, and in that division about nine years. My vote was challenged last October. They would not take my papers, and I got a voucher. Daniel Harkins vouched for me. I was challenged on residence.

Cross-examined:

I was not sworn when I offered to vote. Mr. Harkins, my voucher, was sworn. I produced my tax receipt. I had my naturalization papers and that, both. I offered my naturalization papers to the officers of election, but they didn't look at them. I paid a poll tax some time last fall, a little before the election. I do not remember who I paid it to; it was to the man who received the taxes. I have been living in the same place somewhere about nine years and a half. I could not say when I paid a tax before the last one. I paid taxes several times in the course of the time I have lived there.

No. 380. *John Harison*. Should be *John Hampson*; on list of voters (Ex. 26-2) page 246 at No. 380, is the name of John Harison, (a clerical error;); on regular printed assessed list "H. 4," page 429, is the name of John Hampson, 1416 Salmon street; and on list of taxables, (Ex. 26-3, page 249) is the name of John Hampson, marked as voting, residing at No. 1417 Salmon street. *There is no John Harison on either the regular or extra assessed lists, nor among the added names.* Hampson was vouched for by John Fitzpatrick; (see test., page 385.)

No. 533. *John Carberry*. Error; on list of voters filed by contestant, Ex. 26-2, page 246, *there is no such name.*

No. 289. *William Gallagher*. Added to the list of taxables, and vouched for by Thomas Fay, an officer of the election. (See Ex. 26-3, page 253.)

No. 393. *John McNamee*. Added to the list of taxables, and vouched for by Charles Fay, an officer of the election. (See Ex. 26-3, page 257.)



No. 245. *Felix O'Toole*. Added to the list of taxables, and voted on "age." (See Ex. 26-3, page 257.)

No. 105. *John Quinn*. A good vote, but David Dryburg, the republican window inspector, who kept the list of taxables, forgot to mark him when he voted. There are *two* John Quinns, and both are on the extra assessment list.

Thus, twenty-seven of the thirty-two rejected votes in this division are accounted for, and proved to have been perfectly legal votes. Instead of a reduction of thirty-three in favor of the contestant, there should be only five deducted from these sixty-one unassessed voters. This would make an additional allowance of twenty-eight voters to the sitting member, which would still further reduce the alleged majority of contestant (as per report of committee) from fifty-seven to nineteen majority.

In order that it may be seen how just is this allowance, I may state that of the twenty-nine votes of the sixty-one unassessed voters the majority have rejected, and which I desire to have allowed, twenty-three of these names voted at both elections in October and November, as will be seen by reference to list of voters filed by contestant on pages 243 and 246. For reference, I have tabulated them with their numbers on the respective lists of voters in October and November, 1868:

Voters.	No. of voter in October.	No. of voter in November.
Patrick Phillips .....	13	7
Edmon Parson .....	50	107
Barney McElory .....	74	25
Francis Mulvahill .....	94	310
Jno. Quinn .....	89	333
Jno. Caughey .....	128	192
Lewis Pryor .....	134	156
Patrick Kathgan .....	140	90
Thomas Laulor .....	143	120
Philip Monahan .....	164	287
Ed. McCafferty .....	171	148
Wilson Larue .....	176	455
Jno. McWilliams .....	180	495
Patrick Slaven .....	198	246
Wm. Gallagher .....	289	305
Patrick McGeehan .....	344	322
Jas. McGlaughlin .....	350	325
Patrick Gillroy, or Kilroy .....	358	425
Urias Pearson .....	374	489
Jno. McNamee .....	393	104
Jas. McAran .....	481	447
Edward Porterfield .....	498	119
John Carberry .....	533	221

One more word as to the integrity of this poll. In the October election, as per the tally-list adopted by the majority of the committee, the democratic vote was 496, in November following it was 497; (see Ex. M. M. M., page 260;) and the republican vote in October was 53, while in November following it was 52. (See Ex. M. M. M., page 260.) The aggregate vote in this division in October was 549 votes, and in November following, 549—precisely the same number. Can more clear proof be needed of the integrity of this poll?



We now have but 20 of the alleged majority of 72 left to the contestant. I now proceed to consider—

#### 5.—BENSALEM TOWNSHIP.

I cannot agree with the committee in its conclusion in regard to Bensalem Township. In this township the return for contestant is 173; for the sitting member, 319. The contestant produced 190 persons who on their oaths declared they voted at said election for the contestant; but as six of these witnesses testify that they voted for contestant without all the constitutional qualifications of an elector, these must be deducted from the 190, which leaves contestant a proved vote of 184. The names of the six persons of the 193 who voted for contestant, with their disqualifications, are as follows, to wit:

Michael Weaver (test., p. 137) voted for contestant on minor's naturalization papers, to which he is not entitled, being over eighteen years of age when he came to this country.

Geo. Lynn (p. 143) voted for contestant, and had not paid a State or county tax within two years.

Watson Praul (p. 149) voted for contestant, and had not paid a State or county tax within two years of the election, as required by the constitution. *His father paid his tax.* In explanation of the constitutional provision, which requires "the payment of a State or county tax within two years," in order that a person may vote, it was held in *Catlin vs. Smith*, 2 S. and R., p. 267, that "to enable a citizen, otherwise qualified, to enjoy the rights of an elector, it is necessary that *he* should, within two years next before the election, have paid a State or county tax." *Praul's father paid it.*

William E. Watson (p. 151) voted for contestant; had not paid a State or county tax within two years of the election. *His father paid his tax.*

John H. Harrison (p. 152) same as above.

Wm. Vanzant (p. 155) same as above.

In addition to these disqualified voters, the testimony of Joshua H. Minster (p. 146) and Charles Deal, (pp. 145 and 146,) as to whether Charles Deal or his father, Samuel Deal, voted for contestant, is so contradictory as to be unworthy of belief. These two votes, deducted from the 184, leave 182 as the proved vote of the contestant at this poll.

Allowing the contestant the full credit of his vote proved, the returns in this township, as corrected, would stand thus: Caleb N. Taylor 182, John R. Reading 302.

*Further*, I cannot agree with the majority of the committee in allowing, on the following testimony, an additional difference in favor of the contestant of twenty votes. (See testimony, page 171:)

SAMUEL H. HARRISON, being duly affirmed, deposes and says: There were ten democratic tickets containing the name of Caleb N. Taylor pasted over the name of John R. Reading for Congress.

The contestant has proved but three of these ten votes claimed, viz., *Barnard Maguire*, (p. 129,) *Reuben P. Douglas*, (p. 137,) and *George Lynn*, (p. 143,) all of whom swore they voted a democratic ticket with the name of Caleb N. Taylor on it for Congress. This would gain to the contestant three votes, and lose to the sitting member three votes, thus making the poll in this division, as further corrected, Taylor 185, and Reading 299 votes, thus making a clear gain to contestant (in both corrections) of thirty-two votes instead of the fifty-four allowed contestant in the report of the majority. This makes twenty-two votes *overcharged*



against the sitting member in this division, reducing contestant's majority to seven.

Having shown that sixty-five votes were wrongly charged against the sitting member, I now proceed to show what credits were wrongfully withheld from the sitting member in the examination of this case.

# 1.—THE TALLY-LISTS AS THE HIGHEST PROOF OF THE RETURN IN EACH DIVISION.

As a general principle primary evidence is preferable to secondary evidence. The ballots are the primary or highest evidence of an election, and a Pennsylvania statute requires these ballots to be preserved for the purposes of contested elections.

The next best evidence are the *tally-lists*. These are cotemporaneous records made at the very time of voting. The hourly report of the vote and the returns in the prothonotary's office are *made up* from the tally-lists; are *mere copies* of those lists, and *original documents* are always better evidence than copies. The *tally lists* are preferable evidence to *reports* made from them. The majority of the committee evidently thought so, or they would not have allowed the tally-list of the third division of the Twenty-third ward to have over-ridden the hourly return and general return of the same division, whereby the contestant suffered a loss of sixty votes from his general return of votes.

If this reasoning is correct, (and the precedents in all contested election cases in Pennsylvania sustain it,) what do the tally-lists as filed of record in this case show? Clearly this:

	Votes.
a. In the fourth division of the Twenty-second ward, (an error in the addition,) in favor of the sitting member of . . . . .	13
(See tally-list, Ex. B 1, page 429. Hourly return and general return, Ex. A 6, page 417.)	
b. In the eighth division of Twenty-second ward, (an error in the addition,) in favor of the sitting member of . . . . .	1
(See tally-list, Ex. A 6, page 417, and general return, Ex. A 6, page 417.)	
c. In the sixth division of the Twenty-third ward, (an error in the addition,) in favor of the sitting member . . . . .	8
(See tally-list, Ex. B 5, page 424, and general return A 5, page 416.)	
d. In the third division of the Twenty-fifth ward, (an error in addition,) in favor of the sitting member . . . . .	6
(See tally-list, Ex. D 2, page 426, and general return, A 5, page 416.)	

---

Making an aggregate gain for the sitting member, on this proof, of. 27

---

From this gain, however, is to be deducted the votes the contestant gains by like errors in the addition of the tally-lists, to wit:

	Votes.
a. An error in the second division of the Twenty-second ward. . . . .	1
b. An error in the seventh division of the Twenty-third ward. . . . .	6
Making an aggregate gain for contestant, on this proof, of . . . . .	7

---



Deducting these seven votes which the contestant gains from the twenty-seven votes which the sitting member gains makes a clear gain for the sitting member of twenty votes. These, I hold, must be allowed in the absence of the ballot-boxes, the production of which was urgently demanded by me for a recount of the ballots, in order that the tally-lists might be verified. To this end the counsel for the sitting member had notified the custodians of the same of his intention to ask their production, as will be seen by the following record from pages 404, 405:

## TAYLOR vs. READING.

*Contested election fifth congressional district, Pennsylvania, for a seat in the forty-first Congress.*

PHILADELPHIA, March 8, 1869.

DEAR SIR: I respectfully notify you that I shall apply to the Committee of Elections of the forty-first Congress for a recount of the congressional vote in the following divisions, to wit: The first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, and tenth, of the Twenty-second ward; the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, and tenth, of the Twenty-third ward; and the first, second, and third, of the Twenty-fifth ward. As joint custodian with the recorder of said division ballot-boxes of October election, 1868, I respectfully ask their retention by your honor, subject to congressional demand for the same.

Very truly, yours,

CHAS. W. CARRIGAN,  
*Attorney for Incumbent.*

Hon. DANIEL M. FOX.

## TAYLOR vs. READING.

*Contested election fifth congressional district, Pennsylvania, for a seat in the forty-first Congress.*

PHILADELPHIA, March 8, 1869.

DEAR SIR: I respectfully notify you that I shall apply to the Committee of Elections of the forty-first Congress for a recount of the congressional vote in the following divisions, to wit: The first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, of the Twenty-second ward; the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, of the Twenty-third ward; and the first, second, third, of the Twenty-fifth ward. As joint custodian with the mayor of said division ballot-boxes of October election, in 1868, I respectfully ask their retention by your honor, subject to congressional demand for the same.

Very truly, yours,

CHAS. W. CARRIGAN,  
*Attorney for Incumbent.*

Hon. JAMES GIVEN.

It was to meet just such a contingency as this that the above notices were given, and yet the majority of the committee reject the allowance of these errors in the tally-list, on the ground that the ballot-boxes were not examined or asked to be examined. They were not examined in the district where the testimony was taken, because the courts have decided that the Committee of Elections of Congress were the only competent authority to send for them and examine them, and *that they were asked to be examined* one of the committee making the majority report will cheerfully admit. The sitting member rested his case, so far as the tally-lists were concerned, on the examination of the ballot-boxes and a recount of the ballots, but the majority of the committee saw fit to reject these gains without an examination, and the only one that could test their truth or falsity. In the absence of the ballot-boxes, or a refusal to recount the ballots, the committee must take the highest order of proof presented to them, which are the tally-lists certified to them by the seal of the court having charge of them. They are conclusive, and especially so when the committee refuse to avail themselves of the primary evidence, the ballots which, by request of the counsel of the sit-



ting member, have been kept in safe custody from the day of the election up to the present time.

These tally-lists, therefore, correcting the general return, entitle the sitting member to a clear gain of twenty votes. These overturn the seven majority left to contestant by the report of a majority of the committee, and give the sitting member a legal majority of thirteen.

NOTE.—The discrepancy of six votes between the tally-list and general return of the fourth division of the Twenty-fifth ward has already been allowed by the majority of the committee in its report of an alleged legal majority of seventy-two for contestant. I concur in such allowance.

## 2.—INDIVIDUAL ILLEGAL VOTES CLAIMED BY INCUMBENT

to be deducted from the contestant's return, but not allowed by the majority of the committee.

I think the committee erred in not deducting the following illegal votes from the contestant:

a. Samuel Ely, a resident of Kansas, voted in this township. He was a republican, (see Knight's testimony, p. 296 :)

EDWIN KNIGHT affirmed for incumbent :

Examined under the thirty-third specification, and amended answer.

(Objected to by Mr. Yardly on the same grounds as those offered against the evidence of George Lear.)

WITNESS. I live in Upper Makefield Township, Bucks County. I know Samuel Ely. I have known him fifteen or sixteen years. He is about thirty years of age. I knew him before he was twenty-one years of age. I cannot tell how long he has lived there. I learned to know him in Upper Makefield Township. He had been out of the State about a year and a half. He came back some two or three weeks before the October election. He voted at the October election. He was challenged on the grounds of non-residence. He was not qualified. The board asked him questions, and agreed to let him vote. The politics of the board is republican. There is no democrat in the board.

b. George S. Repplier voted for contestant, in the second division of the Twenty-second ward. This was not his residence in point of law; he lived in the Eighth ward. (See his testimony, p. 307 :)

GEORGE S. REPPLIER, affirmed for incumbent, deposes and says :

I reside at No. 1922 West Rittenhouse square, Eighth ward, Philadelphia. In November I resided at the same place. In October last I resided at Oak lane, second division of the Twenty-second ward, from some time in June previous to the October election. I voted in that division at the October election. About four or five days after the October election I removed to 1922 West Rittenhouse square. I voted at the November election in the Eighth ward of the city of Philadelphia, where my residence is located. I have been in the habit of residing in Oak lane, in the second division of the Twenty-second ward, during what I call the summer months, for the last four years. I have voted in the second division of the Twenty-second ward before that. I do not remember whether it was once or twice I voted there. I lived at 1922 West Rittenhouse square seven or eight months during the year. I consider both places my domicile. I voted for member of Congress at the October election. I voted for Caleb N. Taylor.

This was a "social status" colonizer. He was but a temporary sojourner in the division. His domicile was in the Eighth ward in the city, where he spent nine months of the year and carried on his business. He had none of the *animus manendi* to constitute him a resident for the exercise of the franchise. *Clearly illegal.*

c. Samuel S. White voted for contestant in same division. He was a non-resident; his domicile was in the Ninth ward.

SAMUEL S. WHITE, a witness for incumbent, being affirmed, says :

I reside in Ninth ward, Philadelphia, at 1622 Arch street. In November last I re-



sided at 1622 Arch street. In October last I resided at Green lane and Second street, second division of the Twenty-second ward. I resided there, in the second division of the Twenty-second ward, from about the 1st June prior and up to the October election. I voted at the second division of the Twenty-second ward at the October election. In the November election I voted in the Ninth ward in the city of Philadelphia. I voted for member of Congress at the October election. I voted for Caleb N. Taylor for Congress, the republican candidate.

I moved into the city four or five days after the October election. I never voted in the second division of the Twenty-second ward previous to the last October election, during the three years I resided there.

Another "social status" colonizer. Clearly illegal as Repplier.

d. George Reilly, fourth division of the Twenty-second ward, *voted for contestant*; no residence there; was challenged; no respect paid to the challenge, &c. (See testimony of Stadleman and Jones, pp. 320-321.)

AUGUSTUS R. STADLEMAN, a witness for incumbent, sworn and examined under the first specification:

Question. Did a man named Reilly vote at that division at that election?—Answer. He did.

Q. Do you know his first name?—A. I cannot swear to his first name, but I think it was George. Mr. Edwin T. Jones challenged his vote on the grounds that he was a resident of Bucks County.

Q. Was he asked to produce a voucher for his residence?—A. He was not. He was not sworn himself as to his residence.

Q. Then no notice was taken of the challenge of the right of George Reilly to vote?—A. There was not. The vote of George Reilly was taken and put in the box. I could not swear to it, but I am most certain he voted the republican ticket.

Q. Why do you suppose he voted the republican ticket?—A. Because he and I had many good sneets together, and I knew him to be a republican, and he voted the ticket with a republican heading.

Q. Do you know of your own knowledge how George Reilly voted at the October election?—A. I do not know any further than the heading of his ticket, and further, that he thinks a democrat is not an honest man, and so forth.

EDWARD T. JONES, recalled by counsel for the incumbent:

Question. Did you challenge the right of George Reilly to vote in the fourth division of the Twenty-second ward at the last October election?—Answer. I did.

This vote is clearly illegal.

e. Joseph Applin *voted for contestant* in the fifth division of the Twenty-second ward; voted on age; was over twenty-two years old; had paid no taxes. (Pages 322-323.)

JOSEPH APPLIN, a witness for incumbent, sworn and examined.

Cross-examined by contestant's counsel:

Question. When you say that you believe you were between the ages of twenty-one and twenty-two at the last October election, did you so answer honestly, to the best of your knowledge and belief?—Answer. I believe I said I was over twenty-one years of age, and perhaps twenty-two.

Q. When you say that you are now twenty-two years of age, to the best of your knowledge, you mean that you were twenty-two at your last birthday, in January?—A. I mean that I was twenty-two years old in January, 1863.

J. APPLIN.

Clearly illegal.

f. John H. Budd, second division of the Twenty-third ward, (p. 326,) *voted for contestant*; had not been assessed anywhere for three years; no tax being assessed against him in this division, the receipt he voted on was a fraudulent tax receipt.

"It shall not be lawful for any collector of taxes in any township, ward, or district, nor for any other person on his or their behalf, to receive payment or give any receipt for the payment of taxes that have



not been duly assessed." (Act 27th May, 1861, 8th section, Pamphlet Laws, 402.) Then follows the penalty for so doing, &c.

The majority of the committee reject four votes given to incumbent on precisely the same ground. (See their report, bottom of page 8.)

g. Robert Henry, same division, same ward, (page 328,) *voted for contestant*; voted on a tax receipt obtained in a division and ward where he was not assessed; if not assessed there he could not pay tax there. (See John H. Budd, similar case.)

h. John Gardner, second division Twenty-third ward, (page 327,) voted on *minor's* naturalization papers and *for contestant*, and was over eighteen years of age when he came to this country. Was not entitled to his papers.

JOHN GARDNER, a witness for incumbent, examined under the seventeenth specification of incumbent, sworn, deposes and says:

I reside in second division, Twenty-third ward, near Bustleton; I resided there at the last October election; I voted at the last October election at that poll; I am not a native of this country; I was born at Lancashire, England; I came to this country August, 1850; I am thirty-five years of age; I was born in 1837; I was under twenty years old when I came to this country, to the best of my recollection; I was a little over eighteen years old when I came to this country; I am a naturalized citizen of this country; I was naturalized in 1860.

Mr. Carrigan states that witness produces naturalization paper issued from the court of quarter sessions, county of Philadelphia, bearing date October 20, A. D. 1860, which paper is a duplicate of naturalization paper of the above date, said duplicate bearing date September 28, 1868, which paper states, "that including the three years of his minority he had resided within the limits and under the jurisdiction of the United States."

i. William Cook, same division, same ward, *voted for contestant*; was a minor, (page 330.)

WILLIAM COOK, a witness for incumbent, (examined under sixteenth specification,) sworn, deposes, and says:

I reside in Bell's Corner, on the Bustleton pike, Twenty-third ward. I lived at same place at last October election. I voted at said election. I voted at Bustleton. I was not assessed. I did not pay any tax previous to that election. I lived there three years previous to the October election. I was twenty-one years old last May. I was born May 28, 1848. I voted for Caleb N. Taylor for Congress at that election.

Cross-examined:

I voted on age. I was twenty-one when I voted. I am sure of that.

Question. You said on your examination-in-chief that you was born May 28, 1848; you now say that you are positive that you were twenty-one the time you voted; did you or did you not, therefore, make a mistake in saying you were born in 1848?

(Objected to by Mr. Carrigan, because when the counsel for incumbent was asked to reduce the question to writing it was put in the language first asked, leaving out the following words, to wit: "You will perceive that this makes you but twenty years old.")

Answer. Yes sir; I was born in 1847. I have no doubt whatever of that.

Re-examined:

Q. What made you say you were born May 28, 1848?—A. So my father says. I know nothing about my age except what my father says.

Clearly illegal. Was but *twenty* years old when he voted.

j. Thomas Clayton, same township, *voted for contestant*. Had not been in the State a year after he became a citizen; lived in New Jersey during his alienage.

THOMAS CLAYTON, a witness produced, sworn and examined on the part of incumbent, deposes and says as follows:

Question. Where did you reside and vote at the last October election?—Answer. In Lower Makefield Township, Bucks County.

Q. When did you last move into this State, and where from?—A. I moved into Penn-



sylvania this last April a year, in the year 1868; I moved from Greensburg, New Jersey; I had lived there about four years; I lived in this State since April 1, 1868. I am a foreign-born citizen; I was born in Ireland; I was naturalized since last year, since I lived in Pennsylvania. (Paper produced issued from the court of common pleas of Bucks County, dated the 21st day of September, A. D. 1868, with the signature of R. F. Scheetz, prothonotary, and the seal of said court affixed.) I was not told before I voted that my paper was not right. I voted in that township, Lower Makefield, at the last October election.

Q. What ticket did you vote?—A. I cannot read; do not know what ticket it was; I thought it was the republican ticket; William Kirkman gave me the ticket I voted; Kirkman was my employer; he took me to the election; I did not want to go; I did not go because I did not want to vote, and I was told not to vote.

Q. What are the politics of William Kirkman?

(Objected to by counsel for the contestant upon the ground that it is competent for the incumbent to produce said Kirkman and find out from him what his politics are, he being within the jurisdiction of this court.)

A. He is a republican, I think; he loaned me thirty dollars upon the condition I would vote, and then discharged me because I would not vote the republican ticket at the presidential election, in November; I voted the democratic ticket in November; that is the reason he discharged me; I had a family, and we almost starved before I could get work. I cannot recollect what questions were asked me when I was naturalized; do not know what I swore to.

Q. Did you swear at the time you were naturalized that you had lived one year in the State of Pennsylvania immediately before you were naturalized?—A. No, sir; they did not ask me.

Had no right to vote, clearly.

k. George Lott, third division, Twenty-third ward, *voted for contestant*; no residence there. (Page 338.)

GEORGE S. LOTT, a witness for incumbent, (examined under eighteenth specification,) sworn, deposes and says:

I reside at 902 Pine street, Philadelphia, Seventh ward. I took my meals and slept, except Saturday evenings and Sundays, at 902 Pine street, Philadelphia, at and before the October election. I was assessed in the third precinct, Twenty-third ward. I was not assessed no other place, to the best of my knowledge. My place of business is No. 329 Market street. I voted at the last October election in the third division, Twenty-third ward. I had my Sunday board there and had my washing done there during the whole summer season previous to the October election. I continued my Sunday meals in the third division, Twenty-third ward, after the October election. I always get my washing done there. I was born July 24, 1846. I was past twenty-two years old when I voted in the third division, Twenty-third ward, at the last October election. I have been sleeping and taking my meals at 902 Pine street about four or five months up to the present time; before that at 926 North Second street, for about four or five months. The year before, at the October election, 1867, *I took my meals and slept at No. 617 Chestnut street, Philadelphia. I voted at that election on age, at the corner of Sixth and Jayne streets, in the city of Philadelphia.* My residence was there at that time. At the last November election I voted in the third division of Twenty-third ward. My business was in the city of Philadelphia.

Question. In 1867, at the October election, when you voted on age, in the city of Philadelphia, did you take your Sunday meals and get your washing done in the third division, Twenty-third ward?—Answer. No, sir.

Q. Did you take your Sunday meals and get your washing done in the third division, Twenty-third ward, for the purpose of voting there at the last October election?—A. Yes, sir; and claimed that as my bona fide residence. I voted for Caleb N. Taylor for member of Congress at the last October election.

Cross-examined:

I lived with my father in the third division, Twenty-third ward, in his house, at the time of the election. I am a single man. I considered my father's house my residence at that time. I intended to make it my residence when I went there.

Re-examined:

My father resided in third division, Twenty-third ward, in 1867; at that time I did not consider my father's house my residence. My place of business at that time was 617 Chestnut street. I took my meals at the same place. At the time I took my Sunday meals at my father's, I intended to make his house my residence.

Re-cross-examined:

I am not in business for myself. I am salesman for A. H. Snyder and Brothers.



Clearly illegal. Under like circumstances of residence in 1867, he voted in the city at the October election of that year on age. He was really a "colonizer" in the third division of the Twenty-third ward.

*l. Wm. T. Blaken, same township, voted for contestant: non-resident; in 1867 and November, '68, the presidential election, voted in Philadelphia. (Pp. 338, 339.)*

WILLIAM BLAKEN, a witness for incumbent, (examined under the twenty-second specification,) affirmed, deposes and says:

I reside No. 911 Arch street, Philadelphia. I have lived there since the 14th or 15th of November, 1868; before that I lived at Ninth and Filbert. I considered that my residence for some time after the October election. I had been staying there with a friend some time before the October election. I staid with that friend after the October election at the same place. I lived in Attleboro, Middletown Township, Bucks County, before I lived at Ninth and Filbert. I went to my friend's at Ninth and Filbert in the month of April, 1868. I have staid there until I changed my residence to Philadelphia.

Question. State how long you remained with your friend at Ninth and Filbert after the month of April, 1868?—Answer. I remained there until some time in November. I was employed at No. 4 Arch street, from April to November, 1868. I am a single man.

I voted in Attleboro, Middletown Township, Bucks County, at the last October election. I voted for Caleb N. Taylor for member of Congress. I am twenty-three years old since October last.

Cross-examined:

I am a book-keeper for Woodruff and Bro. I lived with my mother at the time of the October election in Middletown Township, and considered that my home at that time. I was born and brought up in Middletown Township, Bucks County.

Q. Did you ever acquire any other home or residence than your mother's house?—A. I voted once in Philadelphia. When I voted at the October election my home was in Attleboro, Bucks County. I regarded that my residence at that time.

Re-examined:

I voted in Philadelphia in 1867. I voted in Philadelphia, also, in November last. I gave up my residence with my mother several days after the last October election.

Q. In what way did you change your residence when you stated that you lived in Philadelphia, before and after the October election?—A. I changed my residence on account of circumstances connected with my business. Previous to that time I did not think that my position with Woodruff & Bro. was permanent. I was there on trial. I had no reason to believe that it was. I was in no business previous to going to Messrs. Woodruff & Bro. I was employed at Woodruff & Bro.'s since April, 1868, and am still there. I considered my mother's my home several months previous to the October election. I voted at Middletown at the spring election in 1868; this was before I went to the city. I visited my mother as often as my business would admit. I went there several times on Sunday morning and staid until Sunday evening.

Q. State whether anything else than your intention fixed your residence in Philadelphia, after the October election.—A. I changed my residence to Philadelphia in consequence of circumstances.

Q. Did you not carry your residence in your mind, and fix it in Middletown Township, during the month of October, for the purpose of voting there for member of Congress?—A. I did not. I paid tax in October last and the year before.

Re-cross-examined:

I paid tax in Middletown Township. I do not know if I was assessed there. I have every reason to believe that I was. I should have been.

Clearly illegal. Under like circumstances of residence in 1867, he voted in the city in October of that year, and in November, 1868, one month after he had voted in Attleboro Township, Bucks County. He was a colonizer. In addition, he swears he paid a tax, and does not know whether he was assessed.

*m. Charles Pope, Lower Makefield Township, Bucks County, voted for contestant: was over age and had never paid taxes; voted on age.*

CHARLES POPE, a witness produced, sworn, and examined on the part of the incumbent, deposes and says as follows, to wit:

I resided in Lower Makefield Township at the last October election. I voted at the



October election for Caleb N. Taylor for Congress, and I suppose the whole republican ticket; I cannot say positively as to that; I do not know whether I was challenged or not; the election officers did not call me into the room and swear me, as I know of; I do not know whether I voted on age; I never paid any tax; I was not assessed; I do not know how old I am.

Question. From what your sister said, who is older than you, how old do you think you are?—Answer. I do not remember ever to have heard my sister say how old I was. I never voted before.

Q. How is it that you do not remember whether you were sworn and examined before you voted?—A. Because I was in liquor at the time. I left George Snyder's about one month before the election, and boarded at Robert Cook's. I left Snyder's because we did not agree.

Cross-examined:

Q. From the best information that you can obtain, how old were you on the day of last October election?—A. I think I was twenty-one last May; I think I was between twenty-one and two when I voted, and this belief that I was between twenty-one and two when I voted is founded upon the best information that I can obtain.

Re-examined:

I have no information on the subject of my age; no one ever told me, but to the best of my judgment I was between twenty-one and twenty-two when I voted. I did not want to vote, because I did not know my age; I would not have voted had I been sober, because I did not know for certain that I was of age; I was told I need not be sworn to my age; Algernon Cadwallader told me so; Cadwallader is a republican; he wanted me to vote before I was tight, and I think he did after I was tight; I know he voted me.

Re-cross-examined:

Q. You said awhile ago that, to the best of your judgment, you were between twenty-one and twenty-two when you voted at last October election; do you still think that you were at that age?—A. Yes, sir; I think so, but I will not swear to it.

n. Ebenezer Scull, fourth of Twenty-fifth, voted for contestant; had no residence. (His test., p. 40.)

EBENEZER SCULL, a witness produced, sworn, and examined on the part of said contestant, under the second and fourteenth specifications, deposes and says:

(Objected to as above.)

I resided at No. 1103 Hewston street at time of last October election. This is in the fourth division of the Twenty-fifth ward. I resided there about eight months and a half before the last October election. I voted in the fourth division of the Twenty-fifth ward. I voted the republican ticket to the best of my knowledge.

Cross-examined:

I was assessed in that division. I paid a State or county tax in 1868. I have lived here seventeen or eighteen years, except three months and a half out of it. This three months and a half I lived in Jersey. I returned from New Jersey in the spring of 1868, in the middle of April. I am not able to say it was before or after the 15th of April that I returned from Jersey. I don't remember on what date the lease of my house begins.

Question. Then you moved from Jersey back again into the State of Pennsylvania in the month of April, 1868, and do not know what day of the month it was?—Answer. I meant I left there and arrived here about the middle of April. I did not open my ticket and examine it, and I do not know whether the name was on the ticket for Congress.

Re-examined:

Q. Did you go to New Jersey with the intention of making it your residence, or did you go there for a temporary purpose, intending to return to Pennsylvania?—A. I went there and laid out to stay there. I wasn't able to content myself there. I voted in New Jersey over thirty years ago. I am a married man. I took my family to New Jersey with me in 1868.

his  
EBENEZER + SCULL.  
mark.

o. John Stout, illegal vote for Taylor, pp. 18–198 contestant's testimony.

SAMUEL W. WEISS, a witness called by contestant under same specification, being duly affirmed, says:

I lived in Milford Township, Bucks County. I was present at the last October



election. The officers of the election were Henry Applebach, judge; Jacob Wenig and Edward Reiter were the inspectors; Peter Mumbower and Tobias Reiter were clerks. They were all of the democratic party. I was present when *John Stout* voted. His name could not be found on the assessor's list. As much as I know, Reiter put down his name with lead pencil and took his vote. He was neither sworn nor affirmed. No qualified voter was sworn or affirmed for him. He made no proof of the payment of taxes, either by producing a receipt or making proof. He was not asked anything that I could hear. I could have heard any question put to him. I know Herman Lorache.

JOHN STOUT, being duly sworn, deposes and says:

I voted in Milford Township, Bucks County, at the last October election. I voted the republican ticket at said election. I got my ticket at the tavern. There were two kinds of tickets. I chose my tickets for myself. I lived in Milford Township. I had lived there one year. I had paid a State or county tax within two years before said election. I saw Taylor's name on my ticket for Congress.

Cross-examined:

I paid my tax, near one dollar, on election day, before I voted. I paid it to Esquire Reinhart. I was assessed in Milford. *There is no other John Stout in Milford, to my knowledge.*

JOHN STOUT.

Here then we have fifteen clearly illegal votes cast for contestant, which a majority of the committee refuse to deduct from his return of votes. There is no testimony more conclusive in the cases contained in Schedule B (Appendix of the committee's report) than is contained in the testimony as affecting these fifteen cases cited above. To my mind it is conclusive, and these votes should be deducted from the return of the contestant. These votes deducted would leave the sitting member a clear, legal majority of twenty-eight votes.

#### RECAPITULATION.

Colonizer vote wrongly charged to sitting member .....	5
Pauper vote wrongly charged to sitting member .....	3
Soldier vote wrongly deducted from sitting member.....	7
Legal votes in the fourth division Twenty-fifth ward, wrongly deducted from sitting member.....	28
Vote in Bensalem, wrongly given to contestant .....	22
Add the corrected general return by the tally-lists .....	20
Illegal individual votes which should have been charged to contestant .....	15
Total .....	100
Deduct the alleged legal majority as reported by a majority of the committee (accepting their figures and conclusions, without any examination) as correct .....	72
The sitting member is elected by a clear legal majority of...	28

I, therefore, submit the following resolutions for adoption by the House of Representatives:

*Resolved*, That Caleb N. Taylor, the contestant, is not entitled to a seat in this House as representative from the fifth congressional district of Pennsylvania.

*Resolved*, That John R. Reading, the sitting member, is entitled to a seat in this House as representative from the fifth congressional district of Pennsylvania.

SAM'L J. RANDALL.



## ASSIGNMENT OF CONTESTED ELECTION CASES.

*Assignment of contested election cases by the chairman of the Committee of Elections, under the rule of the House adopted February 19, 1870.*

To Messrs. Paine, Heaton, and Potter :

Belden *vs.* Bradford, Colorado.  
Cameron *vs.* Roots, first district, Arkansas.  
Hinds *vs.* Sherrod, sixth district, Alabama.  
Grafton *vs.* Conner, Texas.

To Messrs. Churchill, Butler, and Burr :

Switzler *vs.* Dyer, ninth district, Missouri.  
Zeigler *vs.* Rice, ninth district, Kentucky.  
Shields *vs.* Van Horn, sixth district, Missouri.  
Whittlesey *vs.* McKenzie, seventh district, Virginia.

To Messrs. Cessna, Randall, and Hale :

Taylor *vs.* Reading, fifth district, Pennsylvania.  
Eggleston *vs.* Strader, first district, Ohio.  
Reid *vs.* Julian, fourth district, Indiana.  
Hoge *vs.* Reed, third district, South Carolina.  
Wallace *vs.* Simpson, fourth district, South Carolina.

To Messrs. Stevenson, Burdett, and Kerr :

Sypher *vs.* St. Martin, first district, Louisiana.  
Hunt *vs.* Sheldon, second district, Louisiana.  
Darrell *vs.* Bailey, third district, Louisiana.  
Newsham *vs.* Ryan, fourth district, Louisiana.  
Morey *vs.* McCranie, fifth district, Louisiana.

To Messrs. Brooks, Dox, and McCrary :

Sheafe *vs.* Tillman, fourth district, Tennessee.  
Leftwich *vs.* Smith, eighth district, Tennessee.  
Boyden *vs.* Shober, sixth district, North Carolina.  
Tucker *vs.* Booker, fourth district, Virginia.  
Barnes *vs.* Adams, eighth district, Kentucky.

Mr. Cessna was at a later day assigned to the cases of Switzler *vs.* Dyer, and Shields *vs.* Van Horn, in place of Mr. Butler.

Mr. Kerr took the place of Mr. Dox in the case of Barnes *vs.* Adams.

Mr. Barry, of Mississippi, was appointed, July 1, to take the place of Mr. Heaton, deceased.

---

### J. H. SYPHER.

Allegations of violence and intimidation. Parishes where violence and intimidation were proved to the satisfaction of the committee were thrown out.

House refused to sustain the report. On the first vote it was sustained by 78 to 73. The vote was then reconsidered by 83 to 79, and then, by 100 to 69, the House declared that no valid election had been held, and that neither of the claimants were entitled to the seat.

April 18, 1870.—Mr. Stevenson, from the Special Committee of Elections, consisting of Messrs. Stevenson, Burdett, and Kerr, made the following report :

*The Committee of Elections, to which were referred the Louisiana contested election cases under sundry resolutions of the House, submits the following report :*

Under the instruction of the House, the Committee of Elections, at



the last session of this Congress, considered the question of ineligibility raised against Mr. St. Martin, and reported against him, April 6, 1869, as follows :

*SYPPER vs. ST. MARTIN.*—April 6, 1869.—Laid on the table and ordered to be printed.

Mr. PAINE, from the Committee of Elections, made the following report :

*The Committee of Elections, to which was referred the case of J. H. Sypher vs. Louis St. Martin, from the first congressional district of the State of Louisiana, in obedience to the following resolution of the House of Representatives, adopted March 22, 1869—*

*“Resolved, That in all contested election cases referred to the Committee of Elections in which it shall be alleged by a party to the case, or a member of the House, that either claimant is unable to take the oath prescribed in the act approved July 2, 1862, entitled ‘An act to prescribe an oath of office, and for other purposes,’ it shall be the duty of the committee to ascertain whether such disability exists; and if such disability shall be found to exist, the committee shall so report to the House, and shall not further consider the claim of the person so disqualified without the further order of the House; and no compensation will be allowed by the House to any claimant who shall have been ineligible to the office of representative to Congress at the time of the election, and whose disability shall not have been removed by act of Congress”*—

*submits the following report :*

It was alleged, in writing, before the committee, by said Sypher, that said St. Martin could not take the oath prescribed in the act entitled “An act to prescribe an oath of office, and for other purposes,” approved July 2, 1862. The committee thereupon, in obedience to said resolution, inquired into said charge, and have found and do report to the House that Louis St. Martin, claiming the right to represent the first congressional district of the State of Louisiana in this House, is unable to take the oath of office prescribed in the said act of July 2, 1862.

The House having made no “further order” relative to the claim of Mr. St. Martin, this committee have not considered it, except in so far as it negatives the adverse claim of Mr. Sypher; but, as opposing this claim, Mr. St. Martin has been permitted to appear in person and by counsel, to call and examine witnesses and argue the case.

Without repeating what was said in the report preliminary to our report in the late case of *Hunt vs. Sheldon*, we refer to the general statement of facts and principles therein contained, and reaffirm them. Our faith in the principles applied by the House in that case grows stronger as we continue this investigation, and our opinion of the importance and value of those principles is heightened by events daily occurring.

The best protection we can give to the ballot in the hands of the freedmen is to so administer judgment as that violence and wrong shall not prosper. Thus by taking away the motive we shall most effectually prevent bloodshed, and secure peaceable and fair elections.

Therefore, we ask that the returns from such of the parishes and precincts of this district as have been shown to have been overrun, and carried by violence and intimidation, shall not be counted, and that the result shall be ascertained from the peaceable parishes and precincts.

The district is composed of “all that portion of the parish of Orleans on the right bank of the Mississippi River, and so much of said parish on the left bank of said river as is below and east of Canal street in the city of New Orleans, comprising the fourth, fifth, sixth, seventh, eighth, and ninth representative districts of the parish of Orleans, and the parishes of St. Bernard, Plaquemines, St. Tammany, Washington, St. Helena, and Livingston.”

This district was clearly and strongly republican. The parishes gave in 1867 a large republican majority. In the spring of 1868 the republican majority was over 2,000. There is no reason to suppose that in a



fair and peaceable election, it would have been less in the presidential election; but, on the contrary, the acknowledged strength and popularity of the republican ticket would have increased the party vote there, as it did wherever elections were lawful and peaceable.

The republican vote in the rejected parishes, including all of Orleans, in 1867 was over 14,000. In the spring of 1868 it was 14,227.

The part of the district where violence and intimidation prevailed, at the election in question, was also republican.

In this part, including that part of Orleans, comprised in this district, and St. Bernard, St. Helena, and Washington, the republican party had a majority in 1868 of over one thousand, receiving 8,565 votes. *Over three hundred leading and active republicans, white and colored, were killed, wounded, or otherwise cruelly maltreated by Ku-Klux, and other instruments of violence and intimidation, within sixty days preceding the election.*

Terror and dread took possession of the unprotected people, thousands of colored republicans and some whites voted the democratic ticket from compulsion and fear, and the great mass remained away from the polls, and the 8,565 republican votes were reduced to 84, 80 of which were received in Orleans, 2 in St. Bernard, 2 in St. Helena, (out of Amite,) and in Washington none.

#### ORLEANS.

The House having passed judgment upon the parish of Orleans, we shall not dwell upon it here, except to say that the part of that parish included in this district was the home of the bloody "*Innocents Club*," which was about two thousand strong, and was a terror not only to the city, but the surrounding country, and the greater proportion of violence was committed by it in this district.

#### ST. BERNARD.

The parish of St. Bernard adjoins Orleans, and was the scene of a most sanguinary riot and massacre, in which the "*Innocents*" played a fearful part, and there was no lawful election held there.

The democratic sheriff, without authority of law, went into the forms of an election, and only two republican votes were cast, whereas the parish was well known to be republican, and the democratic sheriff himself testified that if there had been a *peaceable election* the republicans would have had a majority.

#### WASHINGTON AND ST. HELENA.

These are country parishes, bordering upon the State of Mississippi, and were in the hands of the "*Knights of the White Camellia*" and "*Ku-Klux Klan*."

Republicans were visited, threatened, attacked, whipped, maimed, and murdered until the entire organization of the party was broken up in every precinct, except one, where a company of troops was stationed, and even their protection was imperfect, because the officers appeared to sympathize with the democracy, and the men more frequently maltreated than defended colored men. At this precinct, however, a peaceable election was held, and the majority of the republican electors voted.



## THE RESULT.

The official returns for the peaceable parishes is as follows :

*Official return of votes for member of Congress, first congressional district of Louisiana.*

	Sypher.	St. Martin.
Parish of St. Tammany, (page 578, Part II).....	471	703
Parish of Livingston, (page 576, Part II).....	149	670
Parish of Plaquemines, (page 576, Part II).....	1, 330	272
Algiers, (page 577, Part II) .....	780	137
Total.....	<u>2, 730</u> 1, 782	<u>1, 782</u>
Majority for J. H. Sypher.....	<u>948</u>	

The result in the peaceable poll known as "Amite," St. Helena Parish, was as follows :

Poll 1, precinct 5—

St. Martin .....	236
Sypher .....	134

If we include the Amite poll, which the committee deem right under the rule adopted, the result is not changed.

St. Martin having 2,018 votes and Sypher 2,864 votes, leaving Sypher's majority 846.

## ALGIERS.

There was a poll in Algiers, (No. 1, precinct 1,) which was omitted by the board of canvassers from the official returns because it was not returned in time, according to law, and because of intimidation and fraud, by which colored voters were prevented from voting; and it appears that at least forty illegal votes, of persons not registered, were received for the democratic ticket, while many republican voters could not be induced to approach the polls, so great was their fear. Yet, as the proof is not so strong and clear as to the immediate cause of their fear in that locality, and as it seems that the voters were mistaken in their apprehensions, it is thought safer to include this poll, deducting the forty illegal votes, which would result as follows:

St. Martin .....	609
Sypher .....	119

## RECAPITULATION.

The result in the peaceable parishes and precincts is as follows:

	Sypher.	St. Martin.
Parish of St. Tammany, (page 578, Part II) .....	471	703
Parish of Livingston, (page 578, Part II).....	149	670
Parish of Plaquemines, (page 576, Part II).....	1, 330	272
Algiers, (page 577, Part II) .....	780	137
Algiers, (poll 1, precinct 1).....	119	609
St. Helena, (poll 1, precinct 5, Amite).....	134	236
Total.....	<u>2, 983</u> 2, 627	<u>2, 627</u>
Majority for Sypher .....	<u>356</u>	



Leaving a clear majority for Sypher of 356, after allowing all that can be reasonably claimed against him.

We therefore recommend the adoption of the following resolution:

*Resolved*, That J. H. Sypher is entitled to a seat as a representative in the forty-first Congress from the first district of Louisiana.

### HUNT vs. SHELDON.

There were allegations of violence and intimidation. The special committee threw out the parishes where violence and intimidation were proved, and took the result in the peaceable parishes as deciding who was elected.

The report was sustained by yeas 114, nays 51.

March 16, 1870.—Mr. Stevenson, from the Special Committee of Elections, made the following report.

*The Committee of Elections, to which were referred the Louisiana contested election cases, under sundry resolutions of the House, submits the following report :*

There being some general facts and principles which apply to all of the contested cases from the State of Louisiana, it is thought expedient and proper to present them briefly, as introductory to the separate reports of the several cases.

#### GENERAL REPORT.

The State of Louisiana comprises forty-eight parishes and five congressional districts. It is alleged on the one hand and denied on the other, that in several of the parishes of each district a valid election was prevented by intimidation and violence. The parishes thus in issue are, in the first district, Orleans, St. Bernard, St. Helena, and Washington. In the second district, Orleans and Jefferson. In the third district, St. Landry, St. Martin, St. Mary, Vermillion, and Lafayette. In the fourth district, Caddo, De Soto, Bossier, Sabine, and Wynn. In the fifth district, Jackson, Franklin, Claiborne, Bienville, Union, Morehouse, Caldwell, and Catahoula.

Official records establish the following facts:

The number of electors registered in those parishes under the reconstruction acts in 1867 was 74,106; 31,413 white and 42,693 colored; being a majority of 11,280 of colored electors.

The republican vote, at the election in 1867 for the constitutional convention, was 38,335, being a majority of all the registered electors.

The democratic vote was 2,482, the mass of that party not voting because, under the reconstruction acts, a majority of registered electors was requisite to the calling of a convention.

At the next election, held in April, 1868, there were 30,895 votes cast in favor of the republican State, parish, legislative, and congressional ticket, against 26,553, cast for independent candidates, adopted by the democracy.

The next election was that in question, being the presidential and congressional election of 1868, when the number of republican votes cast in these parishes was 3,359, of which number eight parishes cast 3,339. Three parishes cast two republican votes each. Five parishes cast one republican vote each. Seven parishes cast no republican votes.



These facts, appearing from official records, present a startling case and raise a question which demands an answer: What causes produced such results?

The answer is found in the volumes of the testimony which establishes these general facts:

After the spring election in 1868, when the democratic leaders began to reorganize and to form their plans for the presidential campaign, they found themselves masters of society and business, and in possession of the soil.

They resolved to use these advantages to ostracise white republicans and deprive them of support depending on custom; and to debar, or drive from their plantations and employment, all colored republicans adhering to their principles and party.

They held conventions, and passed resolutions expressing these purposes. Their committees and newspapers combined to advise and enforce them, and they were generally applied in threat or execution, where it was practicable without severe losses to the proprietors themselves, and in some cases even to their own detriment, as when a democratic miller refused to grind corn for a colored republican because of his politics.

The prejudices of race were rallied and excited to the verge of insanity. An oath-bound, secret, quasi-military society was organized throughout the State, called "Knights of the White Camellia," or "K. W. C.," the members of which were sworn to obey their superior officers; to oppose by all means in their power the exercise of political authority by colored men; to support and defend each other on call, and to the death, and to keep secret the proceedings of the order.

Into this band were sworn nearly all the democrats of Louisiana.

They were armed and organized under a grand commander and subordinate officers, forming perfect connection from headquarters at the city of New Orleans with every "circle," in every election precinct in every parish in the State, so that the entire force of each precinct, parish, or district, or of the whole State, could be called into action and thrown into the field at the word of a single man, whose will was absolute. So numerous and formidable was this organization that in New Orleans alone it was understood to have an armed force of over fifteen thousand men, and the general commanding the department, being himself a democrat, and well advised on the subject, pronounced it too powerful for him to cope with, and advised the republican leaders to abandon the campaign.

It appears probable that out of the secret circles of this mammoth organization sprang the kindred but ranker growth of the "Ku-Klux Klan," or K. K. K., which, in fearful guise, scoured the disputed parishes, occasionally striking terrible blows against prominent republicans, and filling the freedmen with dismay.

While these coercive means were in operation, refuge was offered within the democratic party.

Democratic clubs were formed into which colored men were urgently invited to enter, with the promise that upon initiation they should receive "protection papers," certifying that the bearer was a "good democrat," entitled to confidence and protection as such, which would bring employment, lands, security, and peace. These clubs and the circles of the K. W. C. were open to white republicans, willing, by abandonment of principle, to escape rigorous social and business ostracism, and the wrath of the Ku-Klux Klan. In order to exhibit the attractions of peace and quiet within the democratic party, in contrast with the hardships and dangers without, democratic barbecues were held, which all the



people were invited to attend and partake freely of the food and drink bountifully provided, and hear public questions discussed by speakers of both colors. The audiences, responding to these invitations, gathered promiscuously about the rostrum, where orators of both colors and all shades sat side by side, and spoke alternately from the same place to the same audience, and after the "feast of reason" the people mingled around the board, and enjoyed the hospitalities of the democratic party without discrimination on account of "race, color, or previous condition of servitude," in some instances active young democrats playing the part of waiters, and serving the colored people in preference to the whites. On these festive occasions all allusions to the "Knights of the White Camellia," and their plans and purposes relative to the disfranchisement of colored citizens, were carefully avoided, the colored orators being kept in profound ignorance of the existence of such an organization.

Thus were presented the alternatives of security and prosperity within the pale of the democratic party, or starvation and destruction without.

But so firmly were the colored men of Louisiana attached to the party of emancipation, liberty, and equal rights, that all these means, coercive and seductive, failed to separate them from the republican ranks.

When this failure became apparent, open violence and wholesale massacre began. The most serious riots occurred in the cities of New Orleans and Jefferson, and the parish of St. Bernard, in the first and second districts; in the parishes of St. Landry and St. Mary, in the third district; and in the parishes of Bossier and De Soto, in the fourth district. In these, and similar though minor outbreaks, including the operations of the Ku-Klux Klan, it is estimated by those best informed, no less than two thousand republicans were killed, wounded by gunshots, or otherwise seriously injured.

The sight and tidings of these things, the assembling of the mysterious omnipresent K. W. C., and the midnight marchings of the Ku-Klux Klan, with the knowledge that no punishment was anywhere inflicted nor even attempted for any of these thousands of outrages, and no effort made to prevent their recurrence, produced such a condition of excitement and apprehension among republicans of all classes in the disordered regions, as caused them generally to avoid the polls and shun publicity on the day of the election.

The republican witnesses testify that on the day of the election they and the masses of their party really believed that any attempt to poll their party vote in those parishes would lead to riot and massacre more serious and extensive than those which had preceded, and many brave men, whose names are honored among the heroes of the late war, concur in this opinion, acknowledge that they feared to vote or to publicly express their political opinions, or canvass for their party, and state under oath that they would gladly have exchanged the perils surrounding them during those troubles for the dangers of the battle-field.

Before abandoning the contest, the republican leaders had made brave and persistent efforts to maintain and advance the principles of their party and promote its success, and had encountered trials such as would have shaken the firmest of men; and many intelligent and trusted colored leaders had suffered martyrdom with devotion and fortitude of which any race of men might well be proud.

Whether the republicans of these riotous parishes can be justified in having declined to contest the election under these circumstances is one of the questions to be determined by the House.

In the opinion of the committee the course pursued was not only



justifiable, but prudent. It would have been gross imprudence to have imperilled the public peace and the lives of their followers by attempting to draw them to the polls in the face of their fierce opponents, flushed with so many recent bloody victories and unrestrained by any power or authority, civil or military, willing or able to control them.

If it be said that there might not have been any violence, the answer is, that recent events had raised a reasonable apprehension of danger, sufficient in law to cause a man of ordinary prudence to so act as to avoid the probable danger.

It may be said that because the statutes of Louisiana provide that actual violence at the polls should void the election, therefore no election can be set aside for violence at any other time or place, however it may affect the minds or conduct of electors; and this may have been the view of the democratic leaders in causing or permitting cessation of violence immediately before the day of election, and in keeping the peace among themselves at the polls. They may have supposed that they could violate the spirit of the State statute without incurring the penalty of its letter. It is submitted that no such views of law should be allowed to prevail. Such a ruling would overturn established principles, and give license to lawlessness. The rule applicable is well expressed in the act of Congress known as the first reconstruction act, passed March 2, 1867, sec. 5, where it is provided as one of the essentials of a valid election that it shall appear "*that all the registered and qualified electors had an opportunity to vote freely and without restraint, fear, or the influence of fraud.*"

This act was passed with special reference to the circumstances surrounding the freedmen of the late rebellious States, and is well adapted to test the fairness and validity of such elections. It is declaratory of an established rule of contested election law, and is at present our only available means of securing fair and peaceable elections in the reconstructed States. It should be strictly and impartially enforced until we shall be prepared to protect the voter in the exercise of his rights, or to punish those who violate them; and it may be that experience will demonstrate that the best permanent practicable means of securing fair and free elections in the reconstructed States will be such an application of this great principle as will teach all parties that they have nothing to gain by intimidation and violence. It is proposed to apply this rule to the several disputed parishes of the districts of the State of Louisiana, and under its operation to reject the returns from those parishes, if any, in which it shall clearly appear, from the testimony, that the electors generally had not an opportunity to vote "*freely and without restraint, fear, or influence of fraud.*"

As to the remaining parishes in which it shall appear that the election was valid, it is proposed that the returns therefrom, when properly authenticated or proved, shall be counted, and the result in each district determined from such returns.

This proposition was indorsed by the House in the case of *Hunt vs. Sheldon*, on the *prima facie*, in which the Committee of Elections in their report said—

It is evident, from the testimony referred to the committee, that in the parishes of Orleans and Jefferson there was no valid election, and the question arises whether this should invalidate the election in the other parishes of the district, and set aside the entire returns.

In all the other parishes the election was quiet, and the vote was as full as that usually cast in loyal States; and it would seem unreasonable and unjust that the peaceable electors of the district should be denied the right of representation because their violent neighbors attempted and failed to deprive them of that right.



The better rule would seem to be that indicated by the legislature of Louisiana, in the resolution referred to the committee, to exclude the disorderly and count the peaceable parishes; thereby defeating the violent and protecting the peaceable and law-abiding citizens in the right of representation.

The House affirmed the report. This rule has been well settled by a long line of precedents, and is deemed unquestionable.

With these general statements of law and fact, applicable more or less to all the districts of the State, we proceed to examine each case referred for consideration.

CALEB S. HUNT *vs.* LIONEL A. SHELDON, SECOND DISTRICT, LOUISIANA.

Mr. Sheldon, the sitting member, was admitted to the seat by resolution of the House, passed April 8, 1869, which is in these words:

*Resolved*, That Lionel Allen Sheldon, claiming the right to represent the second congressional district of the State of Louisiana in the House of Representatives of the United States, be admitted to a seat in this House, without prejudice to the right of any person to contest such seat according to law.

On April 7, 1869, the House had passed a resolution of which the following is a copy:

*Resolved*, That each of the persons claiming seats in the forty-first Congress as representatives of the several congressional districts of the State of Louisiana, excepting such as have been, or before the close of the present session shall be, reported by the Committee of Elections to this House as unable to take the oath prescribed in the act entitled "An act to prescribe an oath of office and for other purposes," approved July 2, 1862, shall, on or before the 15th day of April, 1869, file with the Clerk of the House a statement of the grounds upon which he claims such seat, and a sub-committee shall be appointed by the Committee of Elections with power to administer oaths, take testimony, and send for persons and papers to investigate the facts connected with the late elections for representatives in said several districts during the recess of Congress, at such time and places in the State of Louisiana as they may determine; and upon such investigation and upon the evidence heretofore lawfully taken in said respective cases, the Committee of Elections shall at the next session of Congress report to the House whether the elections in the said several districts were lawful, regular, and valid, and which of said persons, if any, were lawfully elected to represent said districts, respectively, in the forty-first Congress, and whether said claimants are able to take the oath of office prescribed in the act of July, 1862, with a full statement of facts in each case.

The sitting member claims that as the resolution admitting him to the seat was subsequent to that of April 7, 1869, under which we are now proceeding, the latter does not apply to his case, and he insists that his case is to be further considered, if at all, solely under the act regulating contested elections, by which it is provided that notice of contest shall be given within thirty days after the result of the election shall have been declared. Under this act the notice should have been given within thirty days from November 25, 1868, but no notice was given until January 30, 1869; consequently the notice was not sufficient to sustain a contest "according to law," unless the objection was waived, which does not appear, the contestee having made and maintained the objection at every stage of the case. The committee thought proper, notwithstanding this objection, and subject to protest, to proceed in the examination of witnesses in this case; and while upon a rigid construction of the resolutions of the House under the technical rules of law it might be difficult to escape the conclusion claimed by the contestee, we submit the question without recommendation, and assume that the House in its discretion may enter into the consideration of the case upon its merits.

The second congressional district of Louisiana comprises the following parishes and parts of parishes: "All that portion of the parish of Orleans on the left bank of the Mississippi River above and west of Canal street, in the city of New Orleans, comprising the first, second,



third, and tenth representatives districts of the parish of Orleans, and the parishes of Jefferson, St. Charles, St. John the Baptist, St. James, Lafourche, and Terre Bonne.”

By the official returns, as examined and certified according to law, it appears that Lionel Allen Sheldon received 5,108 votes, and Caleb S. Hunt 2,833 votes, as shown by the following official statement:

The following is a true statement by parishes of the number of votes cast for member of Congress in the second congressional district, held November 3, 1868, as shown by the returns on file in the office of the secretary of state, together with the parishes rejected and reasons, thereof:

Parishes.	Forty-first Congress.	
	L. A. Sheldon.	Caleb S. Hunt.
Lafourche.....	1, 613	1, 799
St. Charles.....	1, 335	264
St. James.....	2, 160	770
Total .....	5, 108	2, 833

The following returns were rejected for the reason stated in the official certificate:

Parishes.	Forty-first Congress.	
	L. A. Sheldon.	Caleb S. Hunt.
Orleans .....	125	11, 335
Terre Bonne.....	1, 541	1, 297
St. John the Baptist.....	1, 278	452
Jefferson.....	662	2, 224
Total .....	3, 606	15, 508

#### PARISH OF ORLEANS.

The returns from that part of the parish of Orleans forming a part of the second congressional district were rejected for the reason that the returns were made by the boards of supervisors of registration appointed by authority of an act (No. 92) entitled “An act to facilitate the registry of voters under an act to create a board of registration to superintend the registration of the qualified voters of the State,” approved September 7, 1868, said boards having no authority to perform any duties except that of registration, for which they were especially appointed.

#### JEFFERSON.

The returns from Jefferson Parish were thrown out for the reason that two separate returns were received—one signed by S. S. Henry, as chairman board of supervisors at Carrollton, and the other by J. A. Wagner, H. P. Philips, John Payn, chairmen, and J. H. A. Roberts—it being impossible to tell which, if either, was the correct return.



TERREBONNE.

The returns from this parish were made up and forwarded to the secretary of state by the commissioners of election appointed for the various polls, the only thing in shape of a compilation being a statement showing the number of republican and democratic votes cast, signed by the supervisors.

ST. JOHN THE BAPTIST.

The returns from the parish being signed only by one of the members of the board of registration, and there being no witnesses' names signed thereto, was considered a violation of the twenty-fifth section of act No. 164, approved October 19, 1868, which requires the supervisors of election to repair to the court-house, and, in the presence of at least two witnesses, to compile the return sent in by commissioners. Section 25 makes it the duty of the supervisors to forward triplicate returns to the secretary of state, and no one supervisor has the right.

Mr. Hunt and Mr. Menard were opposing candidates to fill the unexpired term of Mr. Mann, (fortieth Congress.) Mr. Hunt and Mr. Sheldon were opposing candidates for the forty-first Congress. The vote for Mr. Hunt was the same for both terms.

H. C. WARMOTH, *Governor of Louisiana.*

The reasons given appear sufficient in law, but the defects, having been cured by other testimony, save as to part of Orleans Parish, these points become immaterial. No other issues being made, except as to the parishes of Orleans and Jefferson, the vote admitted to be valid is as follows :

Parishes.	Hunt.	Sheldon.
St. Charles .....	264	1,335
St. John Baptist.....	452	1,278
St. James .....	770	2,160
La Fourche .....	1,799	1,613
Terre Bonne .....	1,297	1,542
Total .....	4,582	7,928
		4,582
Majority for Sheldon .....		3,346

The sitting member alleges "that partisans and supporters of my competitor and of the democratic party, in said five wards of New Orleans and in said cities of Jefferson and Carrollton and village of Gretna, organized themselves into armed bands, and by threats, violence, and murder prevented my supporters and partisans from voting, and coerced, by the same means, many of my friends and supporters into voting for my competitor and the democratic ticket. That in said five wards of the city of New Orleans, and the said cities of Carrollton and Jefferson and in the village of Gretna, there existed before and at the time of the said election a complete state of anarchy and violence, there being at the time no civil or military power or authority able to protect life or property, or to secure the free and fair exercise of the elective franchise to the qualified electors of the places last above named." The contestant denies these allegations. The parishes of Orleans and Jefferson adjoin. The cities of New Orleans and Jefferson, though separate municipalities, are practically one city—a stranger would not know when passing from one to the other. This city is the commercial and political capital of the State—center and headquarters of both parties.

Here the democracy were thoroughly organized, not only by the ordinary committees, but by partisan clubs, regular, independent, and fancy,



to the number of seventy-eight clubs, and in addition to and comprehending all others was the secret society of the Knights of the White Camelia, which was understood to muster from fifteen thousand to twenty thousand armed men.

One of the independent democratic clubs, called the Innocents, mustering about fifteen hundred men, principally Spaniards and Sicilians, among them the most desperate men in New Orleans, seems to have been to the city what the Ku-Klux Klan was to the country parishes, and was almost equally dreaded. The political excitement was intense, and as the campaign progressed the feeling increased, until on the night of October 24, 1868, a republican procession passing on Canal street, the principal thoroughfare of the city, was attacked, with guns and pistols, by democratic clubs, routed and driven from the streets with the loss of six colored men killed. This riot inaugurated open violence, and was followed by similar occurrences. Anarchy prevailed for about one week; armed bands took possession of the city, drove the police from their beats, chased down and shot colored policemen, entered and sacked republican club-rooms and the houses of prominent men; shot colored men on sight; and finally gathered in force at police headquarters for the purpose of taking forcible possession, and overthrowing the civil authority, and were with difficulty dissuaded from doing so by their party leaders, upon the assurance that the republican authorities would abdicate in favor of democrats.

During this period of anarchy, which lasted unbroken for about one week, neither the civil nor the military authorities afforded any protection to republicans. The governor of the State had no militia at his command, the act of Congress forbidding the organization of State militia in the late rebellious States. The general commanding the department, when applied to by republicans for protection, said if they would remain at his headquarters he would give them the same protection he had for himself. The governor of the State appealed to the general commanding to use the national forces, and the general replied "that there was an armed organization in the city, the Knights of the White Camelia, fifteen thousand strong, and if they attempted to overthrow the civil government it would be impossible to prevent it; that he had not troops enough to protect the United States property in case of tumult." General Buchanau, second in command, declared "that the general commanding would be as much justified in withdrawing his troops as a general would be before an army of superior force."

During this period of unbridled violence about two hundred and forty republicans were killed and seriously wounded in the parishes of Orleans and Jefferson. Many leading men were compelled to leave the city, and others to conceal themselves, while the colored people were obliged to keep under cover, and when one appeared on the street he was hunted down by the Innocents and killed.

Becoming satisfied that they could not maintain their authority against such odds, the Metropolitan Police Board, at the request of the commanding general, appointed James B. Steedman, a prominent democratic politician, superintendent of police, thus virtually surrendering the police power into democratic hands; and the republican leaders advised the members of their party, and especially the colored men, not to attempt to vote unless they thought they could do so peaceably.

These proceedings produced a condition of comparative peace and order in the nature of a truce, and the general commanding expressed the opinion that if the colored electors would not attempt to vote, the peace might be maintained.



General A. L. Lee testifies that two or three days before the election he had an interview with the general commanding, and says:

When I said I didn't think the republicans would attempt to vote, that they thought it would be perfectly useless, he expressed his gratification in a very marked manner at that fact. He said that he had been in conversation with the leaders of the democratic party, and that they had made various pledges, and that with these he thought he should get over the election without any disturbance.

From this time until the day of election there was less disorder, but proscription was continued; threats were made; Ku-Klux handbills with skull and cross-bones were scattered through colored churches and about the city; registration papers and republican tickets were taken from colored men by force, and the prevailing condition of affairs was such as to convince all prudent republicans that any effort on their part to revive their party and bring out its vote would be the signal for a renewal of the scenes of blood.

The republican leaders therefore, publicly and privately advised the masses of their party not to attempt to vote unless they thought they could do so peaceably, and there was no attempt made by republicans generally to poll their vote. It is the opinion of the republican witnesses, then resident in the city, that this action was what preserved the peace, and that if any effort had been made to poll the colored vote it would have resulted most disastrously.

The same men who had swept the city, without resistance, for days and nights were still there unpunished, triumphant, and with unbroken spirit of lawlessness manifesting the same determined purpose; there was no more power to control them. They were quiet only because they had attained their object, and had no motive for action.

The result shows that their work had been thoroughly done.

The number of registered electors in the parishes of Orleans and Jefferson in 1867 was 34,766, of whom 18,697, a majority, were colored. The republican vote cast at that election in 1867, in those parishes, was 16,083, a large majority of votes cast. The regular republican vote of those parishes in April, 1868, was 17,106. The entire republican vote cast in those two parishes, in November, 1868, was 1,814, being a falling off, in about six months, of over 15,000 votes, upon a largely increased registration.

The comparison is equally striking if confined to the vote in Jefferson Parish alone, or in that part of Orleans comprised within this congressional district. The republican vote in Jefferson in 1867 was 3,284; in April, 1868, 3,133; in November, 1868, 672; a decrease of nearly four-fifths. The testimony relative to the elections of 1867 and April, 1868, does not show the vote of the wards of Orleans separately, but it is understood that the population of the parish was about equally divided between the first and second congressional districts. The registered vote of the part of the parish within the second district in November, 1868, was 21,314, more than half the registered vote of the parish. The republican vote cast at the November election, 1868, was 124, probably not two per cent. of the republican vote.

It seems clear that there was no valid election in either of these two parishes, and that the returns from each of them should be rejected, and that the result should be determined from the returns of the other parishes of the district.

The returns from the peaceable parishes show that the contestee received a majority of 3,346 votes.

We therefore recommend the adoption of the following resolutions:

*Resolved*, That Caleb S. Hunt is not entitled to a seat as a representative in the forty-first Congress from the second district of Louisiana.



*Resolved*, That Lionel A. Sheldon is entitled to his seat as a representative in the forty-first Congress from the second district of the State of Louisiana.

#### MINORITY REPORT.

Mr. Kerr, a minority of the sub-committee of the Committee of Elections, to which was referred the case of C. S. Hunt against L. A. Sheldon, from the second district of Louisiana, submitted the following minority report:

*The undersigned, utterly unable to approve the conclusions of the majority in this case, begs leave to present the following report:*

This contest presents no essentially new features. Mr. Hunt claims the seat in virtue of the majority vote received by him, as shown by the returns of the election verified and put in evidence, (part 2 of the testimony, pp. 589 to 604, and 658, 660, 662,) as follows:

*Statement showing the number of votes cast at the election for C. S. Hunt and L. A. Sheldon, respectively, for the forty-first Congress.*

Parishes.	Hunt.	Sheldon.
St. Charles .....	264	1,338
St. John Baptist .....	452	1,278
St. James .....	770	2,160
La Fourche .....	1,799	1,613
Terre Bonne .....	1,297	1,331
Jefferson .....	2,224	662
Orleans, (1st, 2d, 3d, 10th, and 11th wards of New Orleans) .....	12,534	135
Total .....	19,340	8,514

Showing a majority for Mr. Hunt of 10,826 votes.

Mr. Hunt also claims that the election was lawfully held, and freely, fairly, and peaceably conducted throughout, and it has been not only abundantly so proved, but it is also admitted by contestee.

The foregoing figures, being taken directly from the returns which have been put in evidence, cannot truthfully be disputed, and it is not understood that they are disputed, although it is claimed by contestee, and the majority of the committee have so concluded, that the returns from the parish of Jefferson and the five wards of the city of New Orleans should be wholly rejected for the reasons following:

*Parish of Jefferson.* Because informal and irregular.

*Five wards of New Orleans.* Because they were made by the supervisors of registration, who were not authorized by law to make the returns.

And for the further reason that in said parish and wards there existed, before and at the time of the election, a general state of anarchy and violence, there being no civil or military power or authority able to protect life or property, or to secure the free and fair exercise of the elective franchise.

If the said returns be rejected, and those only from the other five parishes of the district be computed, the votes will then stand—for Mr. Hunt, 4,582; for Sheldon, 7,717; showing a majority for Sheldon of 3,135 votes.



It is immaterial to consider the question of rejection in respect to the parish of Jefferson ; for if the votes from that parish be computed with the votes from the said five parishes, the result would not be changed, except in a reduction of the majority for Sheldon to 1,573 votes. Upon the votes returned from the five wards of the city of New Orleans, then, depends the result of the election in the entire district.

The reason assigned for the rejection of the returns from the five wards of New Orleans is that the supervisors of registration in the parish of Orleans are not authorized to make returns of the election. This objection is made directly in the face of the law, either in misapprehension or disregard thereof. It is expressly made the duty of the supervisors of registration in each parish to make returns of the election to the secretary of state. Sec. 25, act No. 164, relative to elections, reads as follows :

SECTION 25. *Be it further enacted*, That it shall be the duty of said supervisors of registration in each parish to make out triplicate returns, to forward one of them immediately by mail to the secretary of state, and another to the secretary of state by the next most speedy mode of conveyance, and to deposit the third in the office of the clerk of the district court, and in the city of New Orleans, in the office of the clerk of the first district court; and for their willful failure or neglect herein, such supervisors shall, upon conviction before any court of competent jurisdiction, be fined in a sum not exceeding five hundred dollars, at the discretion of the court.

Besides the clear language of the act, we have the official opinion of the attorney general of the State that the supervisors of the parish of Orleans had authority to make the returns of election in question. The opinion is in evidence, Book 2, p. 571, and concludes as follows :

I am, therefore, of the opinion that the boards of supervisors of election, as constituted under the law throughout the State, as well in New Orleans as other parishes of the State, are the proper returning officers.

I am, yours, very respectfully,

SIMEON BELDEN,  
*Attorney General.*

Hon. G. E. BOVEE,  
*Secretary of State, State of Louisiana, New Orleans.*

This same question arose in the contest between Hunt and Menard to fill a vacancy in this (second) district in the fortieth Congress. In that case Menard occupied the precise relative position on the merits as Sheldon does in the present case; the election was held at the same time; the action of the board of State canvassers was the same precisely in both cases; Menard received the certificate to fill the vacancy, and Sheldon received it for the forty-first Congress, Hunt contesting both. Upon this question of returning officers for parish of Orleans, as it arose in the case of Hunt *vs.* Menard, the majority of the Committee of Elections reported as follows :

*Extract from report No. 27.*

The reason given in the certified statement for the rejection of the vote of the parish of Orleans, viz, "that the returns were made by the boards of supervisors of registrations," shows that in this respect *the returns were made as required by law, and that the objection is invalid.*

By the provisions of section 25 of act No. 164, Laws of Louisiana, 1868, page 223, it is expressly made the duty of said supervisors of registration in each parish to make out and forward said returns to the secretary of state.

The foregoing is deemed sufficient to show satisfactorily that the votes cast in the parish of Orleans were legally returned to the secretary of state, and that the returns were unlawfully and wrongfully rejected by the board of State canvassers, and that the votes so returned from the parish of Orleans are entitled to be, and should be, computed to ascertain the result of the election in the district.



In respect to the *further reasons* assigned for the rejection of said returns, viz., the existence of anarchy and violence before and at the time of the election, all the witnesses examined by the committee in respect to the condition of the public peace in the city of New Orleans uniformly testify that at the time of the election, and for several days prior thereto, there was no disturbance of the public peace; that the election was conducted throughout in peace and quiet, and without the slightest interruption; and that every elector entitled to vote, and who offered or sought to cast his vote, was permitted to do so without molestation; and Mr. Sheldon, the contestee, is on the record himself, distinctly admitting that there was no disturbance of the public peace on the day of the election. (See part 1 of the testimony, page 12.) With this fact so fully established, what more can possibly be required to constitute a true and valid election? How, without manifest wrong, can the legal return of an election, so held in perfect freedom to voters and strict regard for the public peace, be lawfully or consistently rejected? It is safe to say that, upon the law, the facts, and the decisions, the election in said five wards was a true and valid election, and the returns thereof legally made cannot justifiably be rejected.

The anarchy, violence, and public disturbance in the city of New Orleans, set up by contestee and the majority of the committee as a proper ground for rejecting the returns of the election in the said five wards thereof, appears, by the testimony of the witnesses testifying on that point, to have occurred some time prior to the election, and therefore could not *necessarily* in any manner interrupt the proceedings at the election, nor prevent the ascertainment of the result.

The rule of law is well settled upon the question of riot and disturbance of the public peace at elections, and has governed the decisions in all analogous cases in courts and legislative bodies, both in England and this country. It is laid down in all the leading authorities on the law of elections, under appropriate titles, viz: Hayward on County Elections; Wordsworth's Law and Practice of Elections; Curtis's Law and Practice of Elections; Rowe on Elections; Sheppard on Elections; 4 Selden; Cooley on Const. Limit.; 1 Peckwell, &c., and is in substance, *that to invalidate or make void an election on the ground of riot and intimidation, it must appear that the proceedings at the election were interrupted and the ascertainment of the result prevented thereby.* This rule furnishes the ground of the decisions by the Committee of Elections in the several cases of *Harrison vs. Davis*, Contested Cases, vol. 2, p. 341; *Preston vs. Harris*, vol. 2, p. 346; *Clements, of Tennessee*, vol. 2, p. 369; *Bruce vs. Loan*, vol. 2, p. 519, Minority Report adopted by the House. In the first-mentioned case, the committee says:

We have now to consider the question whether the election is void by reason of riot and intimidation. The specification is, *that in all the wards bands of men conspired to exclude and obstruct legal voters who intended to vote for the contestant, and did, in fact, assemble at and near the voting places armed, and by threats intimidated, and by violence obstructed and drove away, thousands of legal voters, and deterred many from approaching the polls.*

That statement, considered as an allegation of facts, which, if proved, avoid the election in point of law, is wholly insufficient. It nowhere makes the formal allegation that the law requires; either that *the election was arrested and broken up in every ward, or that so many individuals were excluded by violence and intimidation, as would, if allowed to vote, have given the contestant the majority.* Either of these grounds, if stated and proved, would have been in law decisive of the case; but neither is stated in the specification and neither is proved by the evidence.

The case attempted to be made is one wholly different from either, and wholly unknown in the annals of election law. It assumes that an election is necessarily void at which two thousand voters are prevented by violence or threats of violence from voting,



though the election was never arrested, and though twenty thousand may have been cast, and all for one candidate, *which is absurd*.

It is therefore apparent that there is no case stated to avoid either the whole election or any part of it. It is not stated that the combination anywhere arrested the election, nor anywhere made such a display of force as ought to have intimidated men of ordinary firmness.

In the case of *Preston vs. Harris*, the committee expresses similar views, and says:

The committee refers here to the law upon the subject of election riots. The only cases in which elections have been set aside for this cause are when there was riot at the polls, or such tumult as interfered with the election, and prevented an ascertainment of the result.

Now, it is very clear, from the evidence, that no such condition of things existed in the case under consideration. At every one of the polling places in the district of the sitting member the election was uninterrupted; the votes were all quietly canvassed; the judges signed the returns; they were transmitted, as the law requires, to the governor of the State; the governor made proclamation of the result, and transmitted to the sitting member a certificate of his due election.

In the case of *Clements*, of Tennessee, the committee says:

The committee is also satisfied that on the day of election there was no armed rebel force present in this district preventing or restraining the voters from the exercise of the elective franchise; and that though a violent and bitter public sentiment existed, calculated to overawe and intimidate, yet the rebel forces had not up to that time so taken possession of the district as to prevent such voters as chose to do so from depositing their votes for a representative in this Congress.

Notwithstanding this state of things, the committee in its report, which was approved by the House, came to the conclusion "that on the day of election no armed force prevented *any considerable number of voters*, in any part of said district, from going to the polls," and thereupon they sustained the validity of the election.

In the case of *Bruce vs. Loan*, the minority of the committee, whose report was adopted by the House, says:

The undersigned trust that the presence, in a few of the precincts in this seventh district of Missouri, of a few loyal State troops, acting under the orders of the State authorities, in guarding the polls, will not be considered more dangerous to the free exercise of the elective franchise than was in Tennessee the presence of rebels in arms.

It will be observed that these several cases were founded on allegations of riot, violence, public disorder, intimidation, and interference with voters *on the day of election and at the polls*, and it was sought in each case to avoid the election in whole or in part; but the committee and the House, finding that the proceedings at the election were not interrupted, and the result had been duly ascertained, declared the election in each case valid, thus sustaining the rule aforesaid; and yet, with these former decisions by the committee and the House before them, and directly in point of the case now under consideration, the majority of the committee reports that, because of riot and disturbance of the public peace, not on the day of election and at the polls, but several days before the election, during the political campaign in the city of New Orleans, the election in the five wards aforesaid should be considered void, and that, too, not because the proceedings at the election were interrupted, or the result not ascertainable, but because a large number of republican electors *pretended* that they could not vote with personal safety, notwithstanding on the day of the election no violence, threats, nor intimidation operated to give even color to such pretense.

Another rule, equally well established, is, that whenever it is sought to set aside an election in part on the ground of illegal votes or riot and intimidation, it must be made to appear that, if such illegal votes had not been received or if such riot and intimidation had not prevailed, the result of the election would have been different in the whole district;



for otherwise it would be wholly immaterial whether the election was void or not in part. On this point reference is again made to the authorities before cited. This rule is self-evident, and has always heretofore been the guide of the Committee of Elections to its conclusions, and governed the House in its decisions, and is directly in point of the contest now under consideration.

Mr. Hunt and Mr. Sheldon were candidates for the forty-first Congress in the second district of Louisiana; the election was lawfully held, and without fraud, and peaceably conducted throughout; the returns of the votes cast in the whole district show a large majority for Mr. Hunt; nevertheless, Mr. Sheldon, by the wrongful act of the governor, obtains the certificate, and is admitted to the seat on *prima facie* right, and Mr. Hunt contests his right on the merits. The parties therefore stand in this contest thus: Mr. Hunt, the contestant, alleging and proving that of the votes cast in the whole district he has a large majority over Mr. Sheldon, and Mr. Sheldon, the sitting member, alleging that the election is void in part by reason of riot and violence in the parish of Jefferson and in five wards of New Orleans, prior to the day of election, which intimidated and deterred a large number of electors in said parish and wards from voting, and whose votes, if they had been cast, would have changed the result, and Sheldon would have had the majority instead of Hunt.

The following statement will show, however, that the result in the district would not have been different from what the returns made it; and that Mr. Sheldon would not have had a majority in the district if every registered elector in said parish and wards who did not vote had voted, and all had voted for him, but that Mr. Hunt would still have had a majority in the district; and therefore it is immaterial whether the election in said parish and wards was void or not. It is proper, however, first to explain a discrepancy between Mr. Hunt's brief and this report of the undersigned in respect to the number of votes received by Mr. Sheldon in the parish of Terre Bonne; Mr. Hunt, on page 2 of his brief, making the number 1,542, while in the statement of the undersigned the number is set down as 1,331.

Since the making up of Mr. Hunt's brief an error of 211 votes has been discovered in the number set down as having been received by Mr. Sheldon in the parish of Terre Bonne for member of the forty-first Congress, viz: the 129 votes cast at poll 1, (see return in evidence, part 2, p. 601,) and the 82 votes cast at poll 8, (see return in evidence, part 2, p. 602,) were cast for Mr. Sheldon to fill a vacancy in *fortieth Congress*, and not for member of the forty-first Congress; and the said 211 votes being deducted from 1,542, as put down in Mr. Hunt's brief, make the true number of votes received by Mr. Sheldon in parish of Terre Bonne for member of the forty-first Congress 1,331, as stated by the undersigned. And now, to show that in no event of the election in the parish of Jefferson and the five wards of the city of New Orleans would Mr. Sheldon have received a majority of the votes cast in the district for member of the forty-first Congress, but that the result in the district would still be, as shown by the returns of the election, a majority for Mr. Hunt, I confidently invite attention to the following statement:

Total number (in evidence) of registered electors in the parish of Jefferson and the five wards of New Orleans wherein alone intimidation is alleged to have prevailed .....	26, 313
Deduct total number (in evidence) of votes cast in said parish and wards, viz., Hunt 14,758, Sheldon 797.....	15, 555



And we have, as the number of registered electors not voting by reason of death, sickness, absence, business, advice, indifference, and intimidation, and all of whom, if voting, let it be assumed, would have voted for Mr. Sheldon ..... 10,758

The following summing up will then show the result in the district:

	Hunt.	Sheldon.
In the five parishes of St. Charles, St. John Baptist, St. James, La Fourche, and Terre Bonne, in which it is conceded there was a fair election, the votes were .....	4,582	7,717
In the parish of Jefferson and the five wards of New Orleans, where it is alleged intimidation prevailed .....	14,758	797
Number not voting in said parish and wards, as before shown, all conceded to Mr. Sheldon .....		10,758
Total .....	19,340	19,272

Showing, notwithstanding the concession to Mr. Sheldon of the entire number of non-voters in the parish of Jefferson and the five wards of New Orleans, that Mr. Hunt still would have a majority in the district. Thus it is conclusively shown that the electors in the parish of Jefferson and the five wards of New Orleans, who it is alleged were prevented from voting, do not constitute a number sufficient, if they had voted, to change the result of the election in the district as shown by the returns thereof, and consequently under the rule aforesaid and decisions of the House, it is impossible in fact, and would be grossly unjust in law, to the 15,555 legal electors who did vote in the parish of Jefferson and the five wards of New Orleans (more than half of the entire number voting in the whole district) to deprive them of a voice in the selection of their representative in this House.

If we go to the figures involved in this contest, it will be seen that the number of registered electors in the whole district is 39,860, and the number of said electors who voted at the election was 27,854, seventy per cent. of the registry; and further, that the number of registered electors in the parish of Jefferson and the five wards of New Orleans was 26,313, very nearly two-thirds of the registry of the whole district, and the number of said registered electors in the parish of Jefferson and the five wards of New Orleans who voted was 15,555, about sixty per cent. of the registry, and largely exceeding the number of votes cast in the remainder of the district.

Now, what will these figures prove in connection with the proposed voidance of the election in the parish of Jefferson and the five wards of New Orleans? They will prove (if to keep Mr. Sheldon in the seat, for which he received only 8,514 votes out of 27,854 votes cast at the election, the House shall adopt the proposition of the majority of the committee and avoid the election in the said parish and wards) that 15,555 of the legal electors in said parish and wards will be denied their elective right because 12,299 other electors of said parish and wards did not vote; they will prove that only 13,547 electors out of a registry of 39,860 electors in the district were permitted to take part or have a voice in the selection of a representative for the district in this House; and they will prove that a minority of the votes legally cast at an election is, in the judgment of the House, competent to elect a representative for the



majority. Yes, all these monstrous deviations from well-settled rules of law, uniform precedents, and republican government, will be clearly shown by the figures to follow the adoption of the proposition of the majority of the committee.

But the testimony, fairly and judicially considered, fails to justify the rejection of the vote of the parish of Jefferson. There were some disturbances in that parish prior to the election and during the political canvass, but they were not of an extraordinary character, either in extent or incidents. A few persons were injured, and a few outrages were committed of a violent nature. The evidence, however, shows that on the day of the election, and for several days before, order and peace prevailed, and that the election was legally and peacefully conducted, and the returns so far regularly made that they cannot be legally rejected for informality, and that a great part of the disorder and insubordination which did exist in that parish during that period arose out of conflicts between the authorities thereof and the governor of the State and other officers claiming the right to exercise certain jurisdiction therein, and were not distinctly or chiefly political in their character.

In respect to the legal technicality urged by Mr. Sheldon and presented by the majority of the committee as one of the grounds of his right to the seat, viz., that as he was admitted to the seat subject only to a contest according to law, no person has a right to contest the seat, because he has never received any notice of contest within the time required by the law of 1851. The answer to such special pleading is, that Mr. Hunt's right to contest the seat does not now depend upon technical conformity to the law of 1851. The House resolution of 7th April not only authorizes it, but from the moment of its passage became the law and the rule under which the contest should be tried, and Mr. Hunt has complied with its requirements, and therefore is contesting according to law. The House has fallen back upon its constitutional prerogative of judging of the election and qualification of its own members, and has taken the contest out of the hands of the parties, and commenced the case *de novo*. Mr. Sheldon has admitted the new status of the contest by filing his statement of the grounds of his claim, in obedience to the requirements of the resolution. Under that resolution he was admitted on *prima facie* right to take his seat, subject to any contest against him according to law; and Mr. Hunt, having conformed to the requirements of the House resolution, is now contesting his right to the seat in accordance with law.

I am prevented by lack of time from further considering in this report the general condition of society in the district during the canvass that preceded the election, and I therefore defer further reference thereto until the case comes up for consideration in the House.

In conclusion, I offer the following resolutions as substitutes for those of the majority:

*Resolved*, That Lionel A. Sheldon is not entitled to a seat as a representative in the forty-first Congress from the second district of Louisiana.

*Resolved*, That Caleb S. Hunt is entitled to a seat in this House as a representative from the second district of the State of Louisiana.

M. C. KERR.



## MOREY vs. McCRANIE.

There were allegations of violence and intimidation in certain parishes where most of the votes were polled. It was held by the special committee that the vote of the House in the previous case of Sypher vs. St. Martin was "a limitation on the rule adopted in Sheldon's case," and that it is not sufficient for a claimant to obtain a majority of the votes in "peaceable parishes," where less than one-fourth of the legal electors resided in those parishes, and less than one-fifth of the registered vote was cast in them.

The committee recommended that the election be declared void, and the House adopted their recommendation, *nem. con.*

April 27, 1870.—Mr. Stevenson, from the Special Committee of Elections, made the following report:

*The Committee of Elections, to which were referred the contested election cases from the State of Louisiana, submits the following report:*

The fifth congressional district of Louisiana comprises thirteen parishes, viz., the parishes of Claiborne, Bienville, Jackson, Union, Morehouse, Carroll, Ouachita, Madison, Caldwell, Franklin, Tensas, Catahoula, and Concordia. The official returns were as follows:

STATE OF LOUISIANA, OFFICE OF SECRETARY OF STATE,  
New Orleans, February 16, 1869.

This is to certify that the following is a correct copy of the election returns, for member of Congress from the fifth congressional district, of an election held November 3, 1868, and on file in this office:

Parishes of the fifth congressional district.	Frank Morey.	Geo. W. McCranie.	Patrick Kennedy.	Scattering.
Bienville .....	1	1,385	.....	.....
Caldwell .....	24	483	10	.....
Carroll .....	7	777	1,394	.....
Catahoula .....	149	794	15	.....
Claiborne .....	2	2,944	.....	.....
Concordia .....	1,552	196	7	.....
Madison .....	33	149	1,435	.....
Morehouse .....	1	1,515	1	.....
Ouachita .....	822	1,066	27	10
Tensas .....	831	383	187	.....
Union .....	1	1,415	.....	.....
Total .....	3,423	11,107	3,076	10

Given under my hand, and the seal of State affixed, this 16th day of February, 1869, and of the independence of the United States the ninety-third.

[SEAL.]

GEO. E. BOVEE,  
Secretary of State.



The actual vote cast was as follows :

*Table showing the vote of the fifth congressional district of Louisiana for member of Congress, November 3, 1868.*

Parishes.	Number of votes polled for—		
	G. W. McCranie.	Frank Morey.	P. J. Kennedy.
Bienville .....	1, 385	1	10
Caldwell .....	483	24	1, 394
Carroll .....	777	7	15
Catahoula .....	794	150	7
Claiborne .....	2, 944	2	1
Concordia .....	196	1, 552	1
Franklin .....	1, 213		
Jackson .....	1, 396		
Madison .....	149	33	1, 435
Morehouse .....	1, 515	1	1
Ouachita .....	1, 066	822	27
Tensas .....	383	831	187
Union .....	1, 415	1	
Total .....	13, 716	3, 424	3, 076

McCranie's majority over Morey, 10,292. McCranie's majority over Kennedy, 10,640. McCranie's majority over all, 7,216. Morey's majority over Kennedy, 348.

The official returns reject two parishes, viz: Jackson and Franklin, for the reason stated in the following official certificate :

STATE OF LOUISIANA, OFFICE OF SECRETARY OF STATE,  
New Orleans, April 3, 1869.

This is to certify that it appears from the records of this office, that of the following named parishes the votes of an election held November 3, 1868, for members of Congress, were rejected for this reason, there being no legal returns made to this office, to wit: parishes of Jackson and Franklin belonging to the fifth congressional district, State of Louisiana.

Given under my hand, and the seal of State affixed, this 3d day of April, A. D. 1869, and of the independence of the United States the ninety-third.

[SEAL.]

PITT CRAVATH,  
Assistant Secretary of State.

The testimony does not cure these parishes, but as they are rejected on other grounds we do not discuss the question. The official returns omit one precinct in the parish of Tensas, viz: Ashwood, which was not returned, but is cured by testimony.

An informal and imperfect certificate was issued to Mr. McCranie. At the first session of forty-first Congress the Committee of Elections found him unable to take the oath required by law, he having been engaged in the late rebellion in arms against the United States, and he has not been qualified, and, therefore, whatever may have been the result of the election, Mr. McCranie cannot be admitted to the seat without legislation in his behalf.

Mr. Morey claims the seat, and alleges that "a system of intimidation, threats, violence, and lawlessness, prevailed in the parishes of Jackson,



Franklin, Claiborne, Bienville, Union, Morehouse, Caldwell, and Catahoula prior to the election in November last; that republicans were deterred and prevented by fear from voting at all, or were compelled by threats and intimidation to vote the democratic ticket against their wishes, and that the election in the above-named parishes was a farce, a nullity, and an outrage of the rights of the law-abiding citizens of the fifth congressional district of Louisiana."

In these eight parishes the vote was as follows:

*Table showing result in contested parishes.*

Parishes.	Number of votes polled for—		
	G. W. McCranie.	Frank Morey.	P. J. Kennedy.
Bienville .....	1, 385	1	..
Caldwell .....	483	24	10
Catahoula .....	794	150	15
Claiborne .....	2, 944	2	..
Franklin .....	1, 213	..	..
Jackson .....	1, 396	..	..
Morehouse .....	1, 515	1	1
Union .....	1, 415	1	..
Total .....	11, 145	179	26

We find, from the testimony, that the allegations of violence and intimidation are sustained as to six of these parishes, viz: Bienville, Claiborne, Franklin, Jackson, Morehouse, and Union. In these six parishes but five republican votes were cast; whereas, at the April election, in 1868, over three thousand republican votes were cast. This reduction was accomplished by means of violence and intimidation. The "Knights of the White Camelia" and the "Ku-Klux Klan" prevented a canvass by the republican party, broke up the party organization, drove out and killed leading men, and compelled republicans to join democratic clubs and vote the democratic ticket.

There was no lawful election in these parishes, and their returns should be rejected.

#### CATAHOULA AND CALDWELL.

As to the parishes of Catahoula and Caldwell, the testimony is not so conclusive; a part of the republicans voted, and it is possible that they might generally have done so; yet many were deterred, and some constrained to vote the democratic ticket, by violence and intimidation; and, considering the prevailing terror in surrounding parishes and throughout the State affecting the public mind in these parishes, we are unwilling to base a decision upon the result in these two parishes, or either of them; and therefore propose to reject them also.



The following table shows the result in the remaining parishes, admitted to have been peaceable:

Parishes.	Number of votes polled for—		
	G. W. McCranie.	Frank Morey.	P. J. Kennedy.
Carroll .....	777	7	1, 394
Concordia .....	196	1, 552	7
Madison .....	149	33	1, 435
Ouachita .....	1, 066	822	27
Tensas .....	383	831	187
Total .....	2, 571	3, 438	3, 050

Total vote .....	9, 057
Morey's plurality over McCranie .....	867
Morey's plurality over Kennedy .....	388
Morey's minority of all votes cast .....	2, 183

#### THE LAW.

The House has heretofore, in the case of *Hunt vs. Sheldon*, adopted the rule that *where it appears that certain precincts and parishes (or counties) of a district have been carried by violence or intimidation, the returns therefrom shall be rejected, and the result derived from the returns from the peaceable precincts and parishes, (or counties.)*

In the subsequent case of *Sypher*, the House refused to apply this rule to that case; and your committee, submitting to the judgment of the House, considers it a duty to reconcile these two cases if possible.

We cannot advise the House to abandon the principle adopted in *Hunt vs. Sheldon*, which seems of inestimable value in preventing lawless attempts upon the ballot-box in the late rebellious States, where a new voting population is peculiarly exposed to violence and intimidation by the former master-class, prone by habit and inclination to domineer over their former slaves; and therefore we accept the decision of the House in *Sypher's* case, not as a reversal but as a limitation of the rule adopted in *Sheldon's* case, and interpret the action of the House in *Sypher's* case to mean that the rule should not be so far extended as to apply to such a case where less than one-fourth of the legal electors of the district resided, and one-fifth of the registered vote was cast, within the peaceable parishes and precincts, and the claimant received but a small majority of that vote.

In the present case, the five peaceable parishes comprise about one-third of the territory of the district, and contain less than one-half the population and registered vote, and return a minority of the vote actually polled.

The contestant received in these parishes 3,428. The registered vote of the district was 23,103. The registered vote of the five peaceable parishes was 10,400. The contestant received about one-seventh of the



registered vote of the district, and about one-third of the vote cast in the peaceable parishes.

Another objection to the claim of contestee is that, if there had been a peaceable election in every parish and precinct of the district, the contestant could not have received a majority or even a plurality of the votes cast, because the rejected parishes were democratic at best. They gave a small democratic majority at the spring election in 1868, and would have increased it considerably at a peaceable election in the fall. There were two republican candidates, who divided their party vote about equally, and it seems probable that they would have divided it in every parish had the canvass and election been peaceable, so that the contestant must have been defeated. We therefore conclude that the claim of the contestant cannot be sustained.

#### THE CLAIM OF CONTESTEE.

Should we consider the claim of the contestee, and count the returns of Catahoula and Caldwell, the result would be as follows:

Parishes.	Morey.	Kennedy.	McCranie.	Scattering.
Concordia .....	1,552	7	196	.....
Tensas .....	1,014	187	466	.....
Madison .....	33	1,435	149	.....
Carroll .....	7	1,394	777	.....
Ouachita .....	822	27	1,066	10
Catahoula .....	149	15	794	.....
Caldwell .....	24	10	483	.....
Total .....	3,601	3,075	4,009	10

Thus giving the contestee 4,009 votes, a plurality of 408 over Mr. Morey, and of 924 over Mr. Kennedy; a *minority* of 2,667 of all votes cast in those parishes, being about one-sixth of the registered vote of the district, and about two-fifths of the vote of the peaceable parishes.

The precedent of the Sypher case would therefore apply to the claim of Mr. McCranie, and without a reversal of the action of the House in that case his claim cannot be maintained.

#### MR. KENNEDY.

Mr. Kennedy's claim, if asserted, would, in its best form, fall under the same precedent, and accordingly be rejected.

#### CONCLUSION.

And we conclude, therefore, that there is no valid claim in any person to the seat, and recommend the adoption of the following resolution:

*Resolved*, That there was no lawful election in the fifth congressional district of the State of Louisiana for representative in the forty-first Congress, and neither G. W. McCranie nor Frank Morey nor P. J. Kennedy is entitled to a seat as representative in the forty-first Congress from the fifth congressional district of the State of Louisiana.



## NEWSHAM vs. RYAN.

There were allegations of intimidation and violence in this case, and to such an extent in five out of ten parishes that it was held that they (the five parishes) should be thrown out and the result in the peaceable parishes be accepted. The House, in accordance with the conclusions of the report, seated Mr. Newsham by yeas, 79; nays, 71. A motion was made to reconsider, but it was laid on the table—yeas, 95; nays, 77.

April 25, 1870.—Mr. Burdett, from the Special Committee of Elections, made the following report:

The claimants to seats in the House, for the forty-first Congress, from the fourth district of Louisiana, are J. P. Newsham and Michael Ryan.

The certificate of election was, upon the official count, awarded to Michael Ryan, it being therein declared that, from the returns, "examined, compared, and attested by the proper officers," at the election held on the 3d day of November, A. D. 1868, for member of Congress to represent the fourth congressional district of the State of Louisiana, Michael Ryan received 10,385 votes, and J. P. Newsham 5,606 votes.

The contestant, notwithstanding the count against him, denies the right of Ryan to the seat, alleging that he is disqualified and ineligible to a seat in Congress by reason of inability to take the oath prescribed in the act entitled "An act to prescribe an oath of office, and for other purposes," approved July 2, 1862, as well as by the terms of the fourteenth amendment to the Constitution of the United States.

He further contests his right to a seat upon the ground of alleged fraud, violence, and intimidation, claimed to have been perpetrated by the partisans, and in the interest of, Mr. Ryan, and claims for himself, upon the proof, a majority of the legal votes cast at said election, and his right to be seated as the duly elected member.

The specific grounds upon which the respective parties claim their right to be seated, required by House resolution of April 7, 1869, to be filed with the Clerk of the House, are as follows:

## STATEMENT OF J. P. NEWSHAM.

The following are the grounds upon which I claim my seat in the forty-first Congress:

In the case of JOSEPH P. NEWSHAM, contestant, vs. MICHAEL RYAN, contestee.

You are hereby notified that I will contest your right to a seat in the forty-first Congress upon the grounds and for the reasons hereinafter stated and charged.

I. I charge that you have not been a citizen of the United States for the period of seven years immediately prior to the election on the 3d day of November, last past; that you are ineligible under the fourteenth amendment to the United States Constitution; that you held an office of trust and profit under the State government of Louisiana, in and prior to the year 1861; that you afterward aided and abetted the rebellion; that you were at one time second lieutenant of an armed band of soldiers, affiliating with the rebellion in the seceded State of Louisiana, of the so-called Confederate States of America.

II. I charge that in the parish of Caddo a reign of terror existed, incited by your party supporters, and that thereby I lost three thousand votes, more or less, which otherwise on a fair election would have been polled for myself; that the only man who in said Caddo Parish voted the republican ticket was murdered for doing so on the night of the day he polled his vote.

III. I charge that in the parish of De Soto a reign of terror existed, incited by your friends; and, because of said reign of terror, as many as fifteen hundred votes were lost to the republican ticket and myself.

IV. I charge that in the parish of Wynn no fair expression of the people's will, as comprehended by the word election, was had on the 3d day of November, A. D. 1868.

V. I charge that in the parish of Sabine a reign of terror, intimidation, and lawless violence existed to such an extent that republican voters were compelled to vote for you under duress.



VI. I charge that in the parish of Bossier, at or immediately prior to the election held on the 3d day of November, A. D. 1868, a reign of terror, intimidation, and violence existed, caused and perpetrated by armed democrats, who, without cause or reasonable provocation, shot down and killed republican voters.

VII. I charge that each and all of the above parishes ought, and properly and legally will, be thrown out of said election returns, and that as to these parishes the election is fraudulent, null, and void.

VIII. I charge that you received your votes through fraud, and that they were not, and are not, legal votes.

IX. I charge that I am elected to a seat to represent the fourth district of Louisiana, in the forty-first United States Congress, by a majority of the legal votes cast at said election; that you are not entitled in law, or by right, to a seat, for the above cited and enumerated reasons and grounds; that you have no claims on my seat in the forty-first United States Congress.

J. P. NEWSHAM,  
*Member elect Forty-first United States Congress,  
Fourth Representative District, State of Louisiana.*

WASHINGTON, D. C., April 8, 1869.

#### STATEMENT OF MICHAEL RYAN.

In the matter of J. P. Newsham, contesting the election of Michael Ryan, member returned for the forty-first Congress of the United States from the fourth congressional district of Louisiana.

The defendant and returned member in the above-entitled contest, in pursuance of House resolution No. —, respectfully submits the following statement of the grounds on which he claims his seat on the floor of the House of Representatives:

*First.* He holds the governor's certificate of election, which he insists is in due form.

*Secondly.* The official returns of the election held in the fourth congressional district, on the 3d of November, 1868, for member of Congress, exhibit a large majority in his favor of the legal votes cast at said election.

*Thirdly.* The election was valid. Both parties to the contest claim its validity. The contestant alleges intimidation and fraud in certain parishes, asks that the votes in said parishes be excluded from computation, and that on a computation of the votes of the remaining parishes he be adjudged entitled to his seat. This averment defendant denies, and, claiming that the votes of all the parishes be included, he moves the committee to report, and the House to adjudge, him lawfully elected and entitled to the seat.

*Fourthly.* Defendant specially denies that he is disqualified, or ineligible, or unable to take the oath prescribed for members of Congress, and prays the committee to inquire first into the specification.

All of which is most respectfully submitted.

MICHAEL RYAN,  
*Member elect from Fourth Congressional District, Louisiana.*

The question of the ineligibility of Mr. Ryan put in issue by the contestant is first to be determined. It is admitted that contestee comes within the description of persons set out in the third section of the fourteenth article of amendments to the Constitution, by having previously taken an oath as a member of the legislature of the State of Louisiana to support the Constitution of the United States. That he did give aid and comfort to the enemies of the United States is confidently asserted by contestant, and much evidence has been produced pro and con to meet that issue.

The substantive proofs adduced to sustain the charge of ineligibility are, that Mr. Ryan, in the early part of the year 1862 made a speech to a company of confederate soldiers, encouraging them in their fight for secession. (See testimony of Harry Lott, 1st volume, page 421; of Calhoun, page 424, question 8,572; of Barlow, page 587, question 11,539.) That after the inauguration of the rebellion he wore in public on several occasions the uniform of the confederate military service, and was an officer in a local or home company of troops.

These substantive charges are not seriously disputed, but the motive



and circumstances of them are put in issue by Mr. Ryan. For him it is contended that he was, notwithstanding appearances, at heart a Union man. The proof of his allegiance, however, is only to be found in political associations and sentiments formed and uttered before actual war began, and, after the beginning of hostilities, of declarations against the policy of the secessionists, conversationally made in the hearing of known Union men and personal friends. It does appear generally from the evidence that Mr. Ryan from the first seriously doubted the ability of the rebel leaders to carry their designs to a successful issue, and that he comprehended and deprecated the inevitable waste and destruction that must follow such a failure; but it does not appear that he ever, after the beginning of actual strife, called in question the right of secession or the desirableness of success to the southern arms, provided only they should succeed; much less is there anywhere to be found evidence of any hearty word spoken or deed performed favorable to the Union and for the Union's sake.

That the rebel military authorities were impressed with full confidence in his fealty to their cause, is evidenced by the fact that he remained undisturbed at his home, and unquestioned by them, while the few of his neighbors who were Union men in sentiment, on the bare announcement of that fact, or on the merest suspicion of its existence, were compelled to seek safety by flight, or remaining, to endure insult, imprisonment, or death; and this, too, notwithstanding that by birth, social standing, long residence, and large wealth of lands and slaves, they were as fully entitled to the regard and consideration of the rebel authorities as it was possible for Mr. Ryan to be. A notable instance of this is found in the case of Dr. James B. Sullivan, one of the witnesses for Mr. Ryan, and a kinsman by marriage, a man of large wealth, counting his slaves by hundreds; of high social standing; an officer of the United States army under General Jackson; venerable and infirm with age; by years of social contact, and by every tie of opinion and interest allied with the people of his parish and State, and of the South generally; reticent of speech and demeanor, and yet this neighbor and long-time associate and friend of Mr. Ryan, known as a Union man, was seized at midnight by the order of the rebel general Dick Taylor, and although taken from a sick-bed, compelled, in spite of the appeal of age and decrepitude, to walk long distances; confined, not with other state prisoners, but for two months in a crowded room, with two hundred and eighty negroes and thieves, and was offered no food by his captors, save such as was carried to him and his prison companions on hand-barrows, in use for stable-cleaning purposes. Whatever may have been the secret hope and wish of the contestee as to the result of a contest whose prolonged struggles were so fraught with calamity and woes as to compel other men everywhere, in vindication of their claim to manhood, to range themselves in *certain* attitude to the contest, the committee cannot escape the conclusion that Mr. Ryan did, by the facts recited, give aid and comfort to the enemies of his country, and is, by the terms of the third section of the fourteenth amendment, ineligible to a seat in this Congress.

The committee is next called to the consideration of the facts bearing on the conduct of the election itself in the said fourth district, and to the determination of the issues of fact and law presented by the "statement of grounds" as filed by the parties.

The fourth congressional district of Louisiana is composed of the parishes of Caddo, De Soto, Bossier, Sabine, Wynn, Rapides, Avoyelles, Natchitoches, Pointe Coupée, and West Feliciana.



The parishes challenged for fraud and other causes, and demanded to be excluded from the count by contestant, are the five first named. The contestee insists that the election was valid in all of the parishes composing the district. That an anomalous state of facts existed in many of the parishes of this district at the date of the election in controversy, will be evident to the House upon the mere exhibit of the tables of returns of registration and votes cast at the election—a state of facts so unusual and so much at war with reasonable probability, as of itself to forbid the idea that it was reached by the use of usual appliances, or could reflect the fair expression of the popular will. To this end the annexed table, compiled from official sources, is submitted.

Parishes.	Registered in 1867.			Vote on calling convention, 1867.		Vote for governor, April, 1868.		Vote for Congress, Nov., 1868.	
	White.	Colored.	Total.	For.	Against.	Republican.	All others.	Ryan.	Newsham.
Caddo .....	777	2,987	3,764	2,087	259	1,242	956	2,885	1
De Soto .....	620	1,700	2,320	1,428	74	649	1,053	1,259	.....
Bossier .....	472	1,998	2,470	1,610	121	727	620	1,631	1
Sabine .....	459	321	780	344	15	196	259	865	1
Wynn .....	806	248	1,054	584	49	232	284	702	43
Totals .....	3,134	7,254	10,388	6,053	518	3,046	3,172	7,342	46

The total registered vote for the above-named parishes, made preparatory to the general election of 1868, was 9,783, a falling off, within one year, of 605 persons registered. The congressional vote cast was 7,388, a number 2,395 less than this diminished registration.

An analysis of the table exhibits these facts: That in the election of —, 1867, there were in these parishes 6,053 electors voting as republicans for the calling of a convention, a distinctive republican measure; that in the following April there were 3,046 electors voting for Warmoth, regular republican nominee for governor, and about an equal number for Taliaferro, independent republican, while in less than seven months that vote of thousands was decreased to 46, and the democratic vote, from comparative insignificance, suddenly swelled to 7,342. It is not claimed that in the elections of 1867 and April, 1868, the adverse votes cast exhibited the then strength of the democratic party. For various reasons of party expediency, a large vote was withheld, as instance that of 1867. By the reconstruction acts, a majority of registered electors was requisite to the calling of a convention; hence, such as were adverse to the congressional reconstruction policy could advance their views in no surer way than by remaining away from the polls, and so inducing apathy and a like inactivity on the part of their opponents. But it is confidently claimed by the committee that the votes cast at these elections for the convention and for candidates upholding the reconstruction acts of Congress, were an unmistakable index of the then republican party strength. The issues presented at the general election of November, 1868, in no manner tended to change, so far as the republicans were concerned, the array on which they had twice, within a period of eighteen months, fought and won at the ballot-box. They did present ample reasons for the fullest possible vote on the part of the democracy, as well as the steadiest support of republican candidates, by those already committed to the policy of that party; for, a cardinal element of the con-



test was dissent from the reconstruction policy, intensified with the threat of its forcible overthrow, presenting, on the one hand, the hope of a speedy recovery of ground lost in the two preceding elections; and, on the other, the loss of all practical advantage that had been gained; for, on the republican side, the electors were, in large proportion, colored citizens, whose future all was jeopardized by the chance of democratic success.

In the light, therefore, of these recited facts alone, the result obtained is utterly inexplicable on the theory of ordinary and legitimate appliances. How were they obtained? For a proper solution of the inquiry it is essential that it be borne in mind that the republican voters of these parishes were mainly, almost wholly, colored men, and but lately slaves. That their opponents were led by their former masters, and largely made up of men who, by long contact with, and interest in, the slave system, had come to look upon the African as having no place in the economy of society or civilization save as a motive power in the labor market, and who, by the inevitable logic of their practice and theory, found little scruple in the use of appliances directed against this race, although such appliances as they would have shrunk from and denounced, had their opponents been of their own class or color. Indicative of this state of things, the committee submits an extract from the testimony of G. W. Dillard, the editor of a leading democratic newspaper, published at the city of Shreveport, in the parish of Caddo, and to be found on page 134, of volume 2, of the testimony:

By Mr. BURDETT:

16893. Q. I understand you to say that nothing but the ordinary means of controlling intelligence was used at the last election in your parish?—A. Yes, sir; the ordinary political means.

16894. Q. Do I understand you to say that it was publicly given out by democratic clubs that negroes who would not vote the democratic ticket would not be employed?—A. Yes, sir; that is what I said. Such was our programme.

16895. Q. Did you make that programme publicly known?—A. Yes, sir; it was known throughout the parish.

16896. Q. Do you think that such means of making it known were actually taken as that the negroes generally understood it to be the programme?—A. I do not know about that. That is my judgment and idea. It was pretty well understood.

16897. Q. Do you call that the ordinary means of conducting an election?—A. Yes; I call that the ordinary means. Such a course has been pursued in this State for years and years. It is well known that if the occupants of office do not vote for their employers they lose their office.

16898. Q. How has it been in the country? Has that been the usual course heretofore taken in the politics of Louisiana?—A. In the politics of Louisiana that has been the usual course; that is, it has been well known that if a man did not vote for his employer, his employer would certainly discharge him.

16899. Q. In the good old whig and democratic days, did the whigs tell the democrats who might be working for them as mechanics or otherwise, that unless they voted the whig ticket they should have no more employment?—A. I have known such things to be done here.

16900. Q. Was that done in your vicinity?—A. The whig party has not existed for some years.

16901. Q. In your understanding of the history of politics in this State, has that been the usual course of appealing to intelligence?—A. Yes. I have heard of John Slidell hiring bands of men and sending them from one place to another place, and I have known him to take steamers from the landing, and by fraud and corruption, and promises of office, get votes.

16902. Q. Was that any more decent than the course which you say was pursued last fall?—A. Yes. We did not take such high-handed means as that. We ignore negro suffrage entirely up there. I do not think that negroes should ever become voters.

16903. Q. Then it is a difference in degree, not a difference in principle?—A. I do not believe that any means should be used to influence any voters.

16904. Q. You admit that such means are improper?—A. I admit that all means with the design of securing votes are improper.

16905. Q. You do not mean that certainly?—A. I mean all means that indicate anything except a man's own conviction.



16906. Q. You mean everything except an appeal to his intelligence?—A. Everything but an appeal to his intelligence. That is the only means that a political party should use.

16907. Q. What reason do you give for that course being pursued on the part of the democracy?—A. They used every means to carry the parish. We told the negroes that it would tend much more to their interest to vote with their former masters and friends, with men who had known them all their lives, than to vote with strangers; and that if they voted against their old masters and friends, they would certainly discharge them and would no longer sustain them.

16908. Q. Now I ask you as a fact, whether that was any more justifiable on the part of the former masters than it would have been on the part of the former slaves to have said to those masters, "Unless you vote the radical ticket, we will not strike a lick for you, nor hoe your corn, and we have sustained you all your life?"—A. No; that is a different proposition.

16909. Q. State to the committee the difference between the two propositions.—A. The negroes have been brought up on the plantations, and have been raised by the whites; they have been sustained from their infancy. In my section of the country, negro children were taken as much care of as white children were.

16910. Q. In your judgment, then, the debt is on the part of the black men toward the white men?—A. Yes; certainly.

16911. Q. How much wages were paid up in your country to black men who worked on plantations before the war?—A. None at all.

16912. Q. If any wealth was created in your country, by whose hands was it created?—A. By the hand of the black and the management of the white.

16913. Q. Then it was a mutual benefit?—A. It was nothing more than in purchasing a horse. If I purchase a horse and put him to plow, he might as well turn around and say that he had a right to share with me. The slave was a piece of machinery.

16914. Q. Then you put it that the black man was on the same level, so far as his rights are concerned, as the horse and the engine?—A. I do not see much difference.

16915. Q. Was it on that theory that you conducted the last election?—A. That was our theory, so far as the negroes were concerned.

16916. Q. What was your theory?—A. In relation to the interest that the negro should have in the lands and estates, or anything of that sort, I say that he was purchased the same as a horse, and certainly had no more right to expect that he was going to get any share in the crop, or was to be made the equal of his master, than the horse had.

16917. Q. In the expression of that opinion, do you answer for yourself or for the party?—A. I answer individually for myself. Every man entertains his own opinion in reference to such matters.

16918. Q. This paper of yours is said to be owned by Dillard & Co. Who are the parties of the company?—A. My father, my brother, and myself were proprietors. The paper has been in existence seventeen years. My father and brother are dead.

16919. Q. Who owned the paper last year, during 1868?—A. Myself and the widow of L. Dillard, my father. I am the active and responsible owner.

16920. Q. Who was your news editor?—A. E. Mason, who is absent at present on a trip. He is still connected with the paper.

It is seldom that witnesses are betrayed into so frank an expression of their sentiments on this subject as was this witness, yet the committee believes from all the facts that his statement was honestly made, and correctly epitomizes the theory and fact on which the supporters of Mr. Ryan pressed with bloody hands to the victory they achieved in these contested parishes. It is not claimed that other and proper means were not used to secure for the democratic ticket the support of the colored voters; but it is confidently asserted, that on their failure there was no scruple in the use of every species of oppression and wrong. In these parishes there was no possible appeal for the colored citizen; no cry that he uttered could reach the ear of any authority, either able or willing to afford him protection. His political opponents well understood this, and were not therefore content, failing to convince his judgment, to keep him from the polls, but compelled him to vote at their behest. It may be true that a few colored voters willingly voted the democratic ticket, but that number was inconsiderable, for it abundantly appears that as a class they were and are thoroughly pervaded with the opinion that their newly acquired rights can only be retained or enjoyed under the protection of the republican party. That they are



grossly ignorant is necessarily true; that they are generally unable to describe in set phrase the principles of the party to which they cling is also true; but that they clearly understood their own interests in the struggle pending that election, and the essential differences between the two parties asking their support, abundantly appears from the testimony of such of them as, with due regard for their future safety, the committee ventured to call before it.

Illustrative of this fact, an extract from the testimony of George Washington, to be found on pages 155 and 156 of volume 1 of the testimony, is submitted:

GEORGE WASHINGTON (colored) sworn.

To Mr. KERR:

3833. Q. Do you think that the colored people generally understand the principles of the democratic and republican parties?—A. I don't know whether they do or not.

3834. Q. Do you think you do?—A. I hardly can say whether I do or not.

3835. Q. Do you think you understand the principles of the republican party?—A. I hardly think to say whether I do fully or not.

3836. Q. Do you think you do in part—can you state some of the principles of the republican party?—A. As far as I can see into the republican party, as I look at it, I think it suits me better than any other party; and for one reason, I take it to be the loyal party. I take it to be a party that would justify all the laws. I take it to be the party for peace.

3837. Q. What do you think the republican party would do for the colored men that the democratic party would not do?—A. I think the republican party would just give us our rights—not seat us way up yonder. I did not think they would have lifted us so high as we are now. I would have been satisfied with my freedom; but as it made a way open so that I could go to the ballot-box, I want to go and vote as I please. As to these equal rights, I don't want equal rights; I am very glad if I can have peace. I will give anybody half of my labor for peace. I don't care about office or anything; I just want to have peace so that I can go to work and buy and sell as I want to.

3838. Q. Do you think the democratic party would deprive you of peace and of the right to enjoy what you earned?—A. Yes, sir; and I have the right to believe it; I know it now. There would be many men working as I have been, but they have shot or killed them; they did it two years ago, and they'll do it now.

It is not deemed necessary to embody in this report extended extracts from the testimony in justification of the conclusions arrived at, but only to state generally the grounds upon which the committee bases its recommendations, and which are the more confidently urged upon the acceptance of the House, since they are reached after a most careful personal hearing of the witnesses, had by your order. We assert the truth to be that in the contested parishes the result obtained was accompanied and secured by the use of unlawful means, and by the practice of oppressions and barbarities seldom equalled in any age or country; and that the several polls in all of said parishes ought to be excluded from the count.

The vote of the peaceable parishes, not contested, is shown by the following table:

	For Mr. Newsham.	For Mr. Ryan.
Rapides .....	2, 142	1, 637
Avoyelles .....	517	1, 342
Pointe Coupée .....	1, 503	896
Natchitoches .....	1, 916	1, 375
West Feliciana .....	1, 132	652
Total .....	7, 210	5, 902
Majority for J. P. Newsham .....	1, 308	



If we add in favor of Mr. Ryan the contested parish of Winn, the least disturbed of the contested parishes, it still leaves for Mr. Newsham a majority of 649 votes. The whole number of votes cast in the district was 20,500; the whole registered vote was 25,027; not voting, 4,507.

In ascertaining and declaring the result in this congressional district, as set forth in the certificate of election to Mr. Ryan, the vote in the parishes of Sabine, Avoyelles, and West Feliciana was rejected from the count by the secretary of state, whose duty it is by law to compile the returns. The cause of this rejection, as appears from the evidence of the secretary, was that no such returns were forwarded to his office from these parishes as are required by law. Some testimony was presented tending to cure this defect of form as to the parishes of Avoyelles and West Feliciana. As to the parish of Sabine the committee is, however, unable to state that there are any returns such as are required or contemplated by the law, or entitled to consideration as evidence that any legal election was had. And since there is abundant evidence that in that parish there was a large body of republican voters, which, by the papers tendered as returns, was reduced to but one republican ballot cast at the election in controversy, the committee is of the opinion that the vote of this parish may be properly rejected on the additional ground that there is no legal evidence that any election was had therein.

The committee does not cite the vote cast in the peaceable parishes as truly representing the popular will in those parishes. On the contrary, there were disorders, to the detriment of the contestant, in several of these parishes. Many of his supporters were, by unlawful means, kept from the polls, and others compelled against their will to support his competitor.

The committee therefore recommends that the returns from such of the parishes of the fourth district as are shown to have been controlled by the appliances of fraud and violence be excluded from the count.

A due regard for the rights of the faithful men of Louisiana, whose will was defeated, demands it, while every consideration of future peace for them, and of safety to the State, imperatively requires it.

We therefore recommend the adoption of the following resolutions:

*Resolved*, That Michael Ryan is not entitled to a seat as a representative in the forty-first Congress from the fourth district of Louisiana.

*Resolved*, That J. P. Newsham is entitled to a seat as a representative in the forty-first Congress from the fourth district of Louisiana.

---

#### A. S. WALLACE vs. W. D. SIMPSON.

Intimidation and violence may invalidate the vote of a precinct or county, and the result in the peaceable counties is to determine the result.

The conclusions of the report were agreed to, *nem. con.*, May 27, 1870.

Mr. Cessna, who drew up the report, made the following statement to the House:

"The report in this case is based upon three propositions. The first is this: that when one of two candidates is ineligible the votes given for him are of no effect, and the other candidate is elected. I desire to state to the House that both of my colleagues on the committee (Mr. Hale and Mr. Randall) dissent from the first proposition contained in the report, and that so far as anybody is to be bound by that first proposition there is no one to be bound by it but myself."

"The other two propositions, however, are of a different character. The first is that there was such intimidation as in the judgment of the committee invalidated the poll



in several of the counties of this district. The other proposition is that enough voters were driven from the polls because of violence and fraud to have changed the result had their votes been admitted."

May 18, 1870.—Mr. Cessna, from the Special Committee of Elections, consisting of Messrs. Cessna, Randall, and Hale, made the following report :

Mr. A. S. Wallace and Mr. W. D. Simpson were the candidates in the fourth district of South Carolina for representatives in the forty-first Congress. Mr. Simpson has been declared ineligible, under the fourteenth amendment to the Constitution of the United States, by a resolution of the House. This disposed of his claim to a seat, but allowed him to oppose the claim of Mr. Wallace during the subsequent consideration of the case.

It is claimed, first, that Simpson being ineligible, and that fact having been well known to the voters of the district, and Wallace having received the next highest vote is entitled to the seat; secondly, that in six counties of the district fair elections were prevented by intimidation and fraud, and should be treated as void, and the result ascertained from the elections held in the other counties of the district, which were comparatively orderly and peaceable; and, thirdly, that even if the elections in these six counties should be sustained and regarded as valid, a sufficient number of legal votes in said six counties were offered for said A. S. Wallace and refused, or the voters prevented by violence, intimidation, threats, and murders, from casting their votes as they desired for said Wallace.

In regard to the first proposition the question has seldom been raised in this country, and we can find no American precedent by which this principle is determined. Many questions have grown out of the rebellion that, like the rebellion itself, are entirely unprecedented in this country. It, therefore, becomes necessary for us in treating a case of this kind to call to our aid such light as we are able to draw from reason and legal authorities of this country and England, the source from which so much of our law is derived. It seems to be well settled in England that votes given for a disqualified candidate are thrown away, and the candidate having the next highest number of votes, if qualified, is elected.

In the case of *The King vs. Hawkins*, (10 East., 211,) Lord Ellenborough, in pronouncing the judgment of the King's Bench, said :

The general proposition that the votes given for a candidate after notice of his ineligibility are to be considered the same as if the persons had not voted at all, is supported in the case of *King vs. Withers*, and *Taylor vs. Biggs*.

In the latter case all the judges held—

That when electors vote for a person not qualified it is the same thing as if they had given no votes at all; in which case it is not disputed that silence was constructive consent.

In the case of *Rex vs. Blissell*, upon a motion for a new trial, Lord Mansfield addressing the counsel for the Crown, who was arguing that the disqualification was not notorious, said:

Do you doubt that if he is really disqualified, whether such disqualification is notorious or not, that the votes given for him are thrown away? In another jurisdiction, if the disqualification is notorious, it does more, it elects the other party, and of this you can have no doubt. (*Vide Haywood's County Elections*, page 533.)

In the case of *King vs. Parry* (14 East., 549) it was ruled:

When a candidate is disqualified from sitting in Parliament, and notice thereof is given to the electors, all votes given for such candidate will be considered thrown away, and the other candidate, with a minority of votes, will be in a position to claim the seat on proof of the existence of the disqualifications.



The doctrine laid down in Haywood on Elections, and numerous cases there cited, is, "that voters must have notice of the ineligibility of the candidate so that the voting for him is *willful obstinacy and misconduct upon the part of the voters.*" In principle, it seems not to be distinguishable whether the circumstances of disqualification be within the knowledge of the electors from its general notoriety, or whether it is brought within their observation from actual notice. (Male on Elections, page 111.)

In Cushing's Law and Practice of Legislative Assemblies, (page 66,) it is said, after quoting the English decisions :

In this country it is equally true that the election of a disqualified person is absolutely void, and in those States where a plurality elects, and where the votes are given orally, as in England, votes given for a candidate after notice of his disqualification are thrown away, and the candidate having the next highest number of votes is elected.

In the absence of any positive precedent to the contrary, and in view of the fact that the principle, under circumstances not differing from those that surround this and other cases that may arise in this country, seems to have been well settled in the courts of England, we think the weight of legal authority is certainly upon the side of the contestant. The doctrine of the English authorities would also seem to be in harmony with reason and public policy. It could not be doubted that if a majority in a congressional district would vote a blank ticket, or a ticket having no name upon it, that their votes should be thrown away, and the candidate having the minority should be returned; or if they cast their votes for a mythic candidate, a man of straw, the effect would be the same; they would be regarded as not voting at all, and their silence would be constructive consent. So if they cast their votes for an ineligible candidate, they must be regarded as voting for a person *not in esse*, and the voting is a mere nullity.

We think this, as an abstract question of law, is abundantly sustained by reason as well as authority. As a question of public policy we have no doubt of its entire propriety. While we do not dispute the powers and rights of majorities in this country, we hold that these powers, in order to be available, must be exercised in good faith, and in accordance with the Constitution and laws of the country. When voters undertake to become revolutionary, by casting their votes for a candidate *well known to them to be ineligible*, it is such *willful misconduct* as should forfeit their right in the premises; they should not be allowed to profit by their own wrong to the injury of an honest, law-abiding minority.

Was Mr. Simpson, who claims to have received a majority of the votes in this district, ineligible at the time he was voted for; and did those who cast their votes for him know the fact? The third section of the fourteenth amendment to the Constitution of the United States provides that "no person shall be a senator or representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath as a member of Congress or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid and comfort to the enemies thereof." Mr. Simpson admits, in his answer to the notice of contestant, that he "was a member of the general assembly of South Carolina in the years 1858, 1859, and 1860; that he took the oath as such to support the Constitution of the United States; that he voted for the call of the convention



which passed the ordinance of secession; that he entered the confederate army and served as major and lieutenant colonel until the close of the year 1863, when he was elected to the confederate congress, and that he continued a member of said congress until the close of the war; that he has engaged in open war against the United States, and as a member of the confederate congress he did all he could in an honorable way to advance the cause in which he was engaged."

The electors in this district were therefore thoroughly informed of the ineligibility of Mr. Simpson at the time they voted for him. It is perfectly clear that they had actual notice of his ineligibility. But even without the *actual* notice to individual voters, they are equally bound, under a state of facts such as here presented. They are presumed to have known of the disqualifying article of the Constitution of the United States. They are presumed to have known that he had been a member of the general assembly of South Carolina. They are presumed to have known that he took an oath to support the Constitution of the United States as said member. They are presumed to have known that he was member of the confederate congress. These are presumptions of law, and charge these electors with constructive notice.

When the ineligibility of a candidate arises from his holding or having held a public office, the people within the jurisdiction of such office are held in law to know, and are chargeable with notice of such ineligibility. (*Vide* Grant on Corporations, page 109.)

In this instance there was actual as well as constructive notice of the disqualification of Mr. Simpson. All the witnesses that have been examined state that it was well known throughout the district, and the prominence of Mr. Simpson renders it very certain that this was the case. This case is distinguishable from the case of *Smith vs. John Young Brown*, in the fortieth Congress, from the fact that in that case the disqualification was doubtful, and there was no evidence that the electors knew of the disqualification. He had not served in the confederate army; he had held no office under the constitution of the confederacy that could charge those who voted for him with constructive notice; neither were the acts of disloyalty alleged against him of a character so notorious as to raise a presumption of knowledge upon the part of the electors of the district.

It is conceded that in cases heretofore decided by the House the doctrine here maintained has not prevailed; but it is confidently believed that in none of them was the notoriety of ineligibility raised, considered, or decided. All the cases heretofore considered lacked this important element or ingredient. This is the first occasion on which that fact is made a part of the case.

When we are asked for a precedent we reply: 1. The contrary is nowhere decided; no man was ever refused a seat under similar circumstances. 2. If we have no precedent for the view we take, we reply it grows out of the rebellion, and we have no precedent for that. The rule for which we contend is the rule of common sense and common justice, and we should not hesitate a single moment to establish a precedent which would inform those lately in rebellion that it is high time their rebellious conduct should cease.

The contestant seems to rely, however, with more confidence upon the proposition that in six counties of this district, viz, York, Spartanburg, Union, Laurens, Pickens, and Oconee, a sufficient number of republican voters, who would have voted for him, were kept from the polls by violence and intimidation, as would, if allowed to vote, have given him a majority in the district, and that the elections held in said counties should be disregarded in ascertaining the result.



It seems, from the evidence, that there was a secret political organization in this district, the object of which was to prevent a fair election and stifle the voice of the people.

Thomas Hill testifies that he belonged to one of the lodges of this *patriotic* institution, and that W. D. Simpson, the democratic candidate, was also a member; that one of the objects of this organization was to procure and furnish arms to all white democrats, so as to enable them to take possession of the polls on the day of election and prevent republicans from voting; and that this plan was fully carried out. (*Vide* page 4, book 2.)

It seems that Mr. Simpson and his chivalric coadjutors of this organization confined their warlike demonstrations to that portion of the district in which there was but a sparse white population, and where they could gorge their hungry and thirsty appetites for blood upon the unarmed, defenseless blacks.

R. K. Scott, governor of the State, testifies, (page 55, book 2,) that—

In the aforesaid six counties there was a thorough organization to prevent republicans from voting. A large number of most approved weapons, Winchester repeating rifles, had been shipped into the State during the fall of 1868, and distributed through these counties, and placed in the hands of ex-confederate soldiers, for the purpose of controlling the elections and overthrowing the State government, in case Seymour and Blair were elected. This was the subject of their daily conversations, and was openly declared by their public speakers. That with the exception of the counties of Fairfield, Chester, and Greenville, the election was a mere farce; the frauds, intimidations, violence, and murders were so well known by all men who knew anything about those counties, that no one would so far stultify himself as to say there was anything like a fair election. During the canvass official reports were constantly coming to me of the most brutal outrages being perpetrated upon colored republicans. Mr. Randolph, chairman of the republican State committee, was killed in that district. I called upon General Meade, commanding the military district, to establish posts in this district; but the troops he furnished were so few in number, and their orders were such, that they could afford but little protection.

J. L. Neagle, comptroller general of the State, testifies:

I have a very intimate knowledge of the condition of political affairs in the fourth congressional district during the canvass of 1868. The Ku-Klux carried on the most brutal acts of violence that have ever been witnessed among civilized people. I was a candidate for representative for York County. I did not remain in the county, or visit it during the canvass, by reason of the advice of my friends, who believed I would be assassinated if found in the county. None of the State canvassers ventured into the fourth district after the murder of Mr. Randolph. The republican party in this State is mostly composed of colored people and humble whites, who were considered the poor class prior to the war; and as the colored people had been slaves, and the poor whites had been mere tools for the slave-owners, and accustomed to fear them, these acts of violence on the part of the old slave-holders created a perfect panic, a reign of terror in the ranks of the republicans. Many of them told me they would rather be dead than attempt to vote. If a fair election had been held, Mr. Wallace's majority would not have been less than two or three thousand.

John B. Hubbard, chief constable of the State of South Carolina, (page 43, book 2,) states:

I was through the fourth congressional district before the election. Violence was used against republicans. Men were taken out by the Ku-Klux and whipped, to frighten them from voting the republican ticket. My subordinates reported numerous outrages and murders. In the town of Laurens a man was publicly shot down in the streets for saying he was a republican. Shots were fired at republicans, and a general system of intimidation and terrorism reigned supreme. I advised the members of the legislature from York and Laurens not to go home during recess in 1868. The organization of the Ku-Klux in the third and fourth districts of the State was perfect. Several thousand Winchester rifles were shipped into the fourth district by the democrats. In most of the counties of this district men were driven from their homes; whole families were turned into the highways, and their furniture broken up.

The board of State canvassers accompanied the certificate of election



to Mr. Wallace by a statement of facts, from which we extract the following:

The board of State canvassers find, upon the evidence presented to them, that the election at which the said Simpson appears to be elected was accompanied by such grave and widespread disorder and outrage on the part of his political friends as, in their judgment, makes the apparent result different from the result which a free and orderly election would have secured. It is known to the board of State canvassers that the party to whom the said Simpson belongs, by the newspapers in their interest and by the voice of their public speakers, did inaugurate and keep up a wholesale system of proscription, terrorism, and assassination prior to the election on the 3d of November, 1868, which prevented any considerable canvass of the fourth district, and overawed vast numbers of republican voters, and prevented anything like a free expression of political opinion throughout the district. In their official capacity as canvassers, in their private capacities as citizens and voters, as friends of order and public morality and decency, they solemnly avow their belief that the election of William D. Simpson was a monstrous outrage, a ghastly triumph, whose price was treachery, violence, assassination, and murder.

The evidence given of particular acts in the six turbulent counties would seem to fully justify the conclusions of the State officials.

#### UNION COUNTY.

Jesse J. Mobry, being sworn, states, (page 32, book 2:)

I reside at Gowdeysville post office, Union County; I was one of the managers of election at that precinct on November 3, 1868. The members of the democratic party threatened to kill every man who voted the republican ticket. Many outrages were perpetrated on republicans at night by men disguised, who were riding over the country. I know of five republicans who were murdered by them—three shot and two hanged. A sixth had his throat cut so that he died. Another was tied hand and foot and thrown into the river, but succeeded in getting his hands loose and escaped. Several were taken from their houses and beaten. Armed men were about the polls all day, threatening republican voters. Many republicans came to the polls but did not vote. The vote at this precinct was more than two hundred less than the registered vote. If a fair election had been held the county would have gone republican, *as they had carried the county at a previous election by nine hundred majority.*

Moses Hawkins states, (page 30, book 2:)

I reside in Union County, and have resided there for sixty years. All republicans were threatened at the election in 1868. Just before the election I was shot at by a mob of democrats at Santuck Depot, without any provocation. They mobbed us and I started to leave, when they shot me—the ball breaking my thigh. Thirteen other republicans were wounded at the same time. The Ku-Klux were riding all over the county, frightening everybody.

J. A. Walker states, (page 30, book 2:)

I was born and raised in Union County, South Carolina; am a magistrate. I went to my precinct (Santuck) to vote at the election in November, 1868, but the democrats would not let me vote. They drew knives and pistols and clubs, and said if any man voted the republican ticket they would kill him. Many men had to leave the polls to save their lives. The democrats came to the polls with Winchester rifles on their shoulders. The Ku-Klux went over the county previous to the election, threatening to kill all who voted the republican ticket. A large number of Winchester rifles were brought into the county and distributed before the election.

Isaac Pool states, (page 31:)

I live in Union County. Hundreds of republicans were kept from the polls by the threats of the Ku-Klux, and many were forced to vote the democratic ticket. I voted at the Gowdeysville precinct. The democrats drew knives and pistols, and swore they would kill the first colored man that voted. I saw many men who had been beaten and abused by the Ku-Klux who were going around before the election.

J. P. Porter states, (page 34:)

I reside in Union County; was appointed manager of the Going precinct on the day previous to the election in November, 1868. I went to the court-house for the republican tickets. I started home. When I got four miles eight democrats overtook me, cursing me for a radical. They jerked me off my horse; kicked and beat me till I was covered with blood. I then mounted and started for home. Some of them followed



me and made another attack, pulling me off my horse, kicking and beating me until I was unconscious. My only offense was that I was a republican.

Richard Kinyon states, (page 23, book 1:)

That he was going from Union Court-House to Draytonville, with tickets for his party, when he was met by Samuel Jeffries, who drew out a bowie-knife and made him give up the tickets; made him turn back home, and told him if he stopped in the neighborhood he would have him killed before morning—that he had a crowd of “*hell's terriers*,” who would find him anywhere and kill him. That Jeffries told him he had two hundred colored men on his plantation, and that he would kill any one of them that did not vote the democratic ticket. That many different plans were adopted to prevent colored men from voting. Many were told that their names were not to be found, although they had been registered and voted at a previous election. Many went to the polls and were told to come back again, and when the polls closed as many as three hundred men were standing around the polls waiting to vote.

C. C. Baker states, (page 28, book 2:)

I reside in Union County; I was threatened, if I voted the republican ticket, I should leave the county; I could not live there; I voted the democratic ticket against my own convictions, because I did not regard it as safe to vote the republican ticket. The intimidation amounted to terrorism throughout the county; a great many Winchester carbines were brought into the county; two negroes were hung upon one tree before the election; one of them had been a Union soldier. The negroes working for me, eight in number, were afraid to vote; a very large number of republicans in the county were kept from voting. The election was no fair expression of the people. I served through the war in the Union army, and was a brevet major general when mustered out.

John Bates states, (page 28, book 2:)

I reside in Union County, and have resided there for forty years. I was shot and forced to leave the county for protection. I went to Santuck precinct to vote, but they would not allow me to approach the polls, and swore they would shoot me down if I did. I then went with a great many others to Union precinct; they refused our votes there; they said there were too many radical tickets voted already. Several hundred colored voters were prevented from voting at Union precinct when the polls closed. Armed men guarded the fords and roads to prevent tickets from being taken to many of the precincts in Union, threatening to kill any one who carried tickets. The republicans at all previous elections since reconstruction had carried Union County by a large majority.

Alfred Wright states, (page 34, book 2:)

I reside in Union County. A crowd of men in disguise came to my house on Saturday night before the election and fired several guns over the house and hallooed, “Hide out, radicals!” The same party rode around the county, going to every house where a republican lived, making threats. They caught several republicans and whipped them, and cut one man severely. One man disappeared about the time, and has not been heard from since. His family say that six strange men came to the house and tied and carried him away; it was generally believed he was killed. I heard Dr. R. M. Smith make a speech before the election, in which he said that if the colored men voted the radical ticket their bones would soon whiten the hill-sides from the sea-shore to the mountain-tops.

Many other witnesses testify to deeds of violence in this county upon the part of the democrats, and to the general terror that prevailed, preventing a large portion of the republicans from voting at all, and in a great many instances compelling them to vote the democratic ticket.

#### SPARTANBURG COUNTY.

B. F. Bates, being sworn, states, (page 22, book 2:)

I am fifty-two years of age; was born and raised in Spartanburg County; am a farmer and merchant. The feeling of the democracy was most intense and bitter. My hands, some thirty in number, generally voted the republican ticket at the spring election. They put me down as a radical, and threatened to kill me and destroy my property, and, as the time for the election approached, the terrorism became so great that, for my personal safety and the safety of my property, I went to my hands, and, by explaining to them the danger it would place both them and me in if they voted, I prevailed upon them not to vote, if they were not willing to vote the democratic ticket, but to stay away from the polls; which they did, all but one. I myself voted the dem-



ocratic ticket because I believed my safety required it. The intimidations were general all over the county. I am well acquainted with the county, having represented it in the legislature before the war. Many republicans were kept away from the polls, and many were forced to vote the democratic ticket. The Klu-Klux travelled all over the county for many nights before the election. Two colored men mysteriously disappeared from my neighborhood a short time before the election, and have never returned.

W. Magel Fleming states, (page 58, book 1:)

I was in Spartanburg during the fall of 1868; threats of personal violence were indulged in by democrats toward all who voted the republican ticket, and in many instances these threats were executed. The number of registered votes in Spartanburg County is 4,500; the number of votes cast at the election on the 3d of November, 1868, was 2,060. A very large number of republicans were kept from the polls by threats, and many were forced to vote the democratic ticket.

Dr. John N. Lindsey states, (page 25, book 2:)

I was clerk at the Cashville precinct; I voted the democratic ticket; I saw tickets taken from republicans and torn up; the feeling toward republicans was very bitter and hostile; I know, as a member of the democratic party, that the policy in that election was to intimidate republicans and keep them from voting. If I had been a colored man I would not have gone to the polls.

James Perry states, (page 24, book 2:)

I did not consider it safe to go to the polls, and so advised the men working on my place; to my personal knowledge, a great many republicans in Spartanburg County were kept from the polls by threats and intimidations. Many complaints were made to me of outrages committed by the Ku-Klux.

G. L. Pearson states, (page 23, book 2:)

I went to the Cashville precinct to vote, but, from the threats made there, I did not vote, because it was not safe to vote the republican ticket. I know myself of ten white men and thirty colored men who did not vote at that precinct on account of threats; the democrats carried the precinct by a large majority; the republicans have a majority at a fair election.

Coy Wingo, colored, states, (page 21, book 2:)

I was at the polls, Wilkins precinct, Spartanburg County. The democrats took down the names of all colored voters, and frightened a great many off from voting. I was driven off from the polls, followed by six men; they stoned me and tried to shoot me; they said as long as I staid there none of the colored men would vote the democratic ticket.

William Walker, (book 2, page 19:)

I was intrusted with the distribution of the republican tickets for Spartanburg. I could not go to all the precincts myself, and employed others; some turned back by reason of threats against their lives, while at many precincts they were not allowed to be voted. The election was carried by intimidation in the county. The republican party carried the county for delegates to the constitutional convention by a handsome majority.

A number of other witnesses testify to the general terror that prevailed through this county by reason of the violence and outrages perpetrated on republicans.

#### YORK COUNTY.

Mr. John L. Watson, being sworn, (page 40, book 2,) states:

That he was one of the registers for York County; that the number of registered voters in the county was 4,790; the number of votes cast at the election on 3d of November, 1868, was 3,585, a difference of 1,205, and he is satisfied that the silent vote was republican voters, kept from the polls by intimidation. Active efforts were made by democrats to intimidate freedmen and prevent them from voting, and every effort was made to frighten them and keep them from going to the election. That in some instances doors were broken down and shots fired through houses, endangering the lives of the occupants; that in his own neighborhood, on three farms, more than fifty voters were prevented by various threats and intimidations from going out to vote, and, to his personal knowledge, these men would have voted the republican ticket; that a few nights before the election armed bands of men known as Ku-Klux patrolled



the whole county, visiting all farms where colored laborers were employed, threatening and terrifying them, so as to keep them from the election; that at Rock Hill precinct he was one of the managers of election, and had a good opportunity to see how the election was conducted; that several men were very active in their efforts to overawe and intimidate republican voters, and that they actually did prevent a number of men from voting who were at the polls; he believes as many as fifty were driven away from the polls; that at that precinct one hundred and ninety-three men who were registered did not vote, and he is satisfied they were republicans, who were prevented from voting by intimidation; that he does not know of a democratic vote that was not cast.

**J. H. White states, (page 51, book 1:)**

I am a member of the legislature, and live at Yorkville, York County. Many threats were made against republicans at and before the election in November, 1868. Bands of disguised men rode over the county in all sections, visiting the houses of republicans, shooting into houses, breaking down doors, and threatening that if they went to the polls the next day they should be murdered. The day after the election, a man living near Hickory Grove went with me to a magistrate, and made complaint that a party of men in disguise came to his house on the night before the election and told him if he attempted to go to the election they would kill him. He did go to the election, and took his wife with him, and, on his return, found that his house and all he had in the world was burned up.

**G. Fennec states, (page 39, book 2:)**

I live in Ebenezer, York County. There was a Ku-Klux order in that county in the campaign of 1868. They came to Captain Ferris's farm, where I lived, and attacked me in the house. They broke in, and tried to come in. They shot into my house sixteen or seventeen times. They fired into Captain Ferris's room, and would have killed him if he had been in bed. They said they would kill all republicans. They traveled all over the county disguised, and spread terror everywhere. Many republicans staid away from the polls at the precinct where I voted. Many came to the polls, and were turned away without voting—I should say as many as two hundred.

**John Martin states, (page 41, book 2:)**

I am a magistrate, and was one of the commissioners of election for York County. The condition of things was very outrageous and threatening in the county. I voted at Hickory Grove precinct. The election was conducted by disorderly and riotous men. They threatened myself and all republicans, crying, "Cut their damned throats." They prevented a large number of republicans from voting. General terror prevailed at the polls at that precinct. The republicans have a large majority, nearly two to one, but at this election the democrats carried it by a large majority.

**Maloy Jones and Nelson Haywood state, (page 43:)**

Bands of men in disguise rode over the county, threatening men if they went to the polls they would be killed, and leaving coffins at republican houses, marked K. K. K.

**LAURENS COUNTY.**

**Thomas Hill sworn, states, (book 2, page 4:)**

I was town marshal of Laurens at the time of the presidential election in November, 1868. The democrats were very violent and excited. They sent out armed patrols, every night, who threatened to exterminate republicans. They broke up the Union League. The republicans were afraid to show themselves. It was not safe for a man to say he was a republican; he was liable to be shot down for saying so. One man by the name of Tabby was shot down in the town of Laurens for saying he was a republican. The murderer was not arrested. The next day his two brothers came to town with guns, hunting two colored men to kill them. I gave the men notice and they got out of the way. I was compelled to join a democratic club to save my life, at Laurens. The club I joined passed resolutions to prevent republicans from voting at the election in November, 1868. They passed resolutions to furnish every white democrat with arms, so as to take possession of the polls and prevent republicans from voting, and on election day they were all armed. I saw them attack Mr. Freeman, agent of the Freedmen's Bureau, and at the risk of my life I kept them from killing him. They refused to let him vote because they said he was a damned republican. I saw them attack Adams, a colored republican, and drive him out of town. Some sixty of them fired revolvers at him. They blocked up the polls, and would only allow a republican to vote now and then. Their conduct created a general terror among the colored voters, and kept them from voting. Mr. W. D. Simpson, the democratic candidate for Congress, was a member of the democratic organization I have mentioned.



James Chews states, (page 4, book 2:)

I reside in Laurens County. I was at the polls on election day a short time; I was afraid to stay longer, on account of threats made by democrats to kill me. A large number of colored voters came to me; they were told by the managers that they could not vote unless they voted the democratic ticket. A great many told me they were afraid to vote, and went off without voting; some told me they had been beaten and abused by the Ku-Klux the night before. I did not consider this a fair election, as a great many republicans had been kept from the polls by intimidation, and because we had carried Laurens County ever since reconstruction by handsome majorities.

Sandy Williams states, (page 4, book 2:)

A colored man by the name of Wise was shot down at Laurens a few days before the election; he received five shots, and died shortly after. A number of republicans were whipped, and upon all hands they feared for their lives. The democrats formed a line to keep colored men from voting; I know at least fifty that did not vote on that account. The Ku-Klux overran the county, carrying terror everywhere. A man named Epps was attacked a few days before the election, wounded, and driven off; Giles Todd, who was with him, also badly wounded. On the night before the election they fired cannon all night, and sent abroad reports that the democrats and republicans were fighting, to frighten republicans from the polls.

Watt McCoy states:

I reside in Laurens County. I was at the election in November, 1868. I saw hundreds of colored voters driven away from the polls by violence. Previous to the election they came to my house, tore out my windows, and told my wife (I was not at home) that if I voted the republican ticket they would kill me. On the morning of the election the roads were guarded to prevent republicans from coming to the polls.

Elias Thompson states, (book 2, page 7:)

I reside in Laurens County. I voted for Simpson. There were in my neighborhood about two hundred and eighty voters, colored, and thirty only of them voted. No republican's life was safe at that time. The republicans have always carried Laurens at a fair election.

Wade Perrin states:

I voted at Laurens Court-House in November, 1868. Democrats came to the election with guns strapped on their backs, and many stood at the polls with clubs. The colored men were driven back and not allowed to vote unless they voted the democratic ticket.

Spencer Sullivan, Caesar Culbertson, and N. Freeman state, (pages 7, 8, 9, book 2:)

That their houses were broken open and themselves abused and threatened with death if they voted the republican ticket.

#### OCONEE COUNTY.

Alexander Bryce, being sworn, states, (book 1, page 36:)

I am a merchant; reside in Wohola, Oconee County; I am well acquainted with the county; was deputy sheriff four years; I was one of the State constables during the election, November 3, 1868; many threats and disturbances occurred in the county, and several deeds of violence before the election; complaint was made to me that the democrats in several instances had threatened and shot at republicans; several republicans stated they had been lying out from home for fear of the Ku-Klux; republicans were threatened and shot at while attending political meetings; colored men were whipped, abused, and turned away from their houses during the campaign. When I was going to the polls I met sixteen colored voters leaving the polls. They said they had been told at the polls that they would not be allowed to live in the county if they voted the republican ticket, and they were afraid to go back to vote. One of them went back with me. I took him up to the polls. A democrat stepped up and took the ticket out of his hand. I said he had a right to vote. The man who took the ticket, and two others, said to me, "You damned radical, if you say a word, we will shoot your heart out." Armed bodies of men were patrolling the county before the election, denouncing and threatening republicans. Reports came to me frequently, as an officer, of outrages in the county.

J. F. Cox states, (page 11:)

I reside at Keonee precinct, Oconee County. I wanted to vote the republican ticket,



but was afraid to. I know a large number of republicans who did not vote for the same reason, and a large number of colored voters who were forced to vote the democratic ticket. Not one republican vote was polled in that precinct.

William Kilpatrick states, (page 10:)

The lives of all active republicans were in great danger in Oconee County. I went to vote at my precinct. They tore up my ticket and offered me a democratic ticket, and I did not get to vote.

J. B. Sanders states, (page 12:)

I reside in Oconee County. I voted the democratic ticket at the election in November, 1868. I was compelled to do so by the circumstances surrounding me. There was a large colored vote in my precinct, (Center,) but none were cast. Many staid at home on account of threats and intimidations.

David Sanders states, (page 12:)

I am county treasurer of Oconee. A very large number of republicans did not vote on account of intimidations. The lives of republicans were in danger.

#### PICKENS COUNTY.

Jeremiah Lupee, being sworn, states, (page 17, book 2:)

There was general intimidation produced by the threats and acts of the democrats; that some thirty or forty came to his house; that he tried to get them to go to the election, but they were afraid of losing their lives. I went to the polls and voted, but was grossly insulted. That the intimidation produced by the Ku-Klux was so general that the larger portion of the republicans in the county did not go to the polls. They proclaimed that republicans would have to leave the county after the election; and to enforce this threat the managers of election kept separate lists of republicans and democrats.

Orland C. Folger states, (page 15:)

I was chairman of the republican committee of Pickens County. There was not more than one-half of the registered vote polled in Pickens. This was owing to a large number of the republicans not voting, from fear of personal danger. There was a general system practiced in the county to prevent republicans from voting. The democrats were organized into clubs all over the county, the object of which was to prevent republicans from voting. At Pickensville precinct threats were made that they would drive away all radicals from the polls. Consequently the democrats carried that precinct by a majority of sixty-five at the election in November, 1868, while at the election in the preceding June, the republicans carried it by one hundred and twenty-seven.

Dr. A. M. Folger states, (page 13:)

I reside in Pickens County. A majority of the republicans were deterred from voting at the election of November, 1868, by threats of personal violence. At the election for county officers, held in June preceding, the republicans carried the county, electing the sheriff.

Perrin O. Dell states, (page 15:)

I was a manager of election at Pickensville precinct at the election on November 3, 1868. There was some disturbance at the election, and apprehension all day. Armed bands rode all over the county before the election, and left coffins at colored men's houses, and created general terror throughout the county. Large numbers, both white and black, were prevented from voting, as they expected and dreaded personal violence at the polls.

W. A. Lesley states, (page 17:)

I am a merchant, and reside at Pickens Court-House. It was understood before the election that there would be a party of men at the polls to keep republicans from voting, and to mark all who voted that ticket. I had been register of Pickensville precinct, and not one-half the registered colored vote was polled. There were armed men at the polls making threats against republicans.

Other witnesses testify to these and similar facts, showing violence and outrages in these counties. There is evidence also showing many irregularities in the reception of votes and organizing election boards.



But your committee is satisfied that the elections held in these six counties were mere farces, and are entitled to no consideration as the expressed will of the people; that under no precedent or any principle of law or justice could these elections be considered valid. In the case of *Harrison vs. Davis*, (Contested Election Cases, vol. 2,) which is probably the leading case upon the question, it is ruled "that if so many individuals were excluded by violence and intimidations as would, if allowed to vote, have given the contestant the majority, this would have been in law decisive of the case." This doctrine is conceded in the minority report in the recent case of *Hunt vs. Sheldon*. But if we had no precedent, the committee would not hesitate to decide that where there was such violence and bloodshed as would intimidate men of ordinary firmness, and where a sufficient number of voters to have changed the result were kept from the polls by reason of this intimidation, it would be as fatal to the poll as if the election board had been controlled by intimidations. In the recent cases acted on by the House from Louisiana, it was contended that there was no violence used at the polls, and therefore there was no actual obstruction to a fair election. In this instance, according to the evidence, there was a conspiracy to prevent a free election. Mr. Simpson and his friends had organized secret political clubs in all of those counties, with the avowed design of preventing republicans from voting. They had procured an abundant supply of fire-arms, and were ready to make any use of them that the success of their purpose required. Their murders and threats before the election had so far done their work that their appearance at the polls fully armed and equipped was sufficient to intimidate republican voters, both white and black, who had so recently witnessed the outrages practiced by these desperate men. At most of the polls there was violence used just in proportion to the firmness and determination manifested by the republican voters. In counties where there were but few white republicans the Ku-Klux, by traversing the counties for several nights before the election, beating the freedmen, shooting into their houses, and leaving coffins at their doors, so completely terrified them that it required but little effort on the day of election to drive them from the polls.

Did this violence and intimidation deter a sufficient number of voters from voting, who, if they had voted, would have elected the contestant? We are clearly of opinion that it did. We think, too, that by the evidence it is fully established that a fair election in these six counties would have largely increased the majority for Mr. Wallace in the district.

The result in the district was as follows:

Counties.	Wallace.	Simpson.	Total.
Chester.....	1,662	1,405	3,067
Fairfield.....	1,994	1,182	3,176
Greenville.....	1,531	1,578	3,109
Laurens.....	5,187	4,165	9,352
Oconee.....	1,181	1,895	3,076
Oconee.....	291	1,064	1,355
Pickens.....	369	1,105	1,474
Spartanburg.....	376	2,074	2,450
Union.....	866	1,756	2,622
York.....	1,537	2,039	3,576
Total.....	9,807	14,098	23,905



	Registered vote.	Vote cast.	Not voting.
Chester, certificate.....	4, 150	3, 067	1, 083
Fairfield, certificate.....	3, 643	3, 176	467
Greenville, book 1, page 56.....	3, 900	3, 109	791
Laurens, certificate.....	4, 788	3, 076	1, 712
Oconee, certificate.....	2, 023	1, 355	668
Pickens, certificate.....	1, 800	1, 474	326
Spartanburg, book 1, page 58-59.....	4, 500	2, 450	2, 050
Union, certificate.....	3, 553	2, 622	931
York, book 1, page 17 ; book 2, page 40.....	4, 790	3, 576	1, 214
Total.....	33, 147	23, 905	9, 242

The foregoing tables show that the vote at this election was 9,242 less than the registered vote of the district, and that Mr. Simpson received 2,475 less than one-half of the registered vote.

At an election held in this district for representative in the fortieth Congress in April, 1868, only a few months prior to the one now under consideration, the republican candidate received a majority of 3,023.

The county of York gave a republican majority, in April, 1869, ranging from three to four hundred. (Page 40, 2d book.)

At an election at the same time in Laurens, for school commissioner, the republican candidate had a majority of about two hundred, and these are the only counties in which elections have been held since 1868.

It is sometimes urged that in cases where a fair election has been prevented by fraud and violence only in a part of a district the whole election should be set aside, and a new one ordered. When a portion of the people of any district, in a peaceable and orderly manner, and in strict compliance with all the forms of law, manifest their will at the ballot-box, we can see no good reason why that will should be disregarded on the ground that there were other people in the district who did not choose to obey the law, nor submit to its requirements. It will be conceded that if thirty thousand of the voters of this district had decided to stay at home on the election day, and the other three thousand had gone to the polls and voted, their choice would have been the legal choice of the whole district. And it would have made no difference whether the entire three thousand persons who voted lived in one county or in two counties, or in the whole nine counties of the district. We can see no difference between such a case and the one now being considered.

It must not be forgotten that those who insist upon setting aside the entire election are pleading in the interest of traitors and for the cause of treason. Simpson was the exponent of rebellion—the faithful, tried, and trusted representative of treason in the army and in the councils of the confederacy.

Wallace was one of the few followers of the Union cause in the State of South Carolina. Born and raised in their midst, and commanding their respect and esteem as a man, during all the dark days of the rebellion he remained faithful, and is to-day one of the very few natives of South Carolina who can take the test oath.

It may not be important to determine when a rebel becomes loyal, nor the exact moment when a rebel State becomes reconstructed. It will hardly be contended that the soldiers in Lee's army were entitled to vote for United States officers before Lee's surrender, or that officers



of the confederate government could do so before the capture of Jefferson Davis. The exact length of time required for either of these classes to cool off and reassume the garb of loyalty to the government has not been definitely settled. Many of the friends of the government believe that at least some little time should be allowed, and some evidence of a change of conduct, if not of heart, should be required. It is confidently insisted that the democratic leaders in these six counties of the fourth congressional district of South Carolina did not, on the day of the election in 1868, exhibit by their conduct any very satisfactory evidence of a change of purpose and design, or show very many "works meet for repentance."

The same system prevailed in each one of these six counties. Clubs were formed; resolutions passed; laborers discharged for voting their sentiments; men denounced; custom taken from them; their property burned; houses fired into; some stripped and flogged; others crippled, scourged, waylaid, and robbed; pictures of Union men taken and sent around to democratic roughs, so that they might know whom to murder; cannon fired all of the night before the election, so as to frighten the negroes and keep them from the polls; the whole district filled with Winchester rifles, (fourteen-shooters;) many Union men, both white and black, hung up to the trees, and shot down in the woods and in the streets; and many others compelled to vote the democratic ticket against their will, in order to save their lives. If these practices are evidences of a fair and impartial election, and if they were learned by the people of South Carolina during the short reign of Jefferson the First, it is surely not much to be regretted that his reign was of short duration.

There is still another view of the case presented by the contestant. He insists that, without setting aside the election in any county in the district, he has shown that more men offered and attempted to vote for him who were refused and prevented than would be required to overcome the apparent majority for Simpson. As already shown, the votes returned in the entire district give Wallace 9,807, and Simpson 14,098, or 4,291 majority. In the three counties not assailed, Wallace received 5,187, and Simpson 4,165, or 1,022 majority for Wallace. It is in evidence that at every other election since the close of the rebellion this district gave a republican majority. In April, 1868, the majority for Colonel Goss, republican, was 3,023. It appears from the evidence that, in the six counties of this district now assailed, there were kept from the polls, or driven away by violence and intimidation, a very large number of persons who either offered or intended and attempted to vote for Mr. Wallace. The exact number cannot be ascertained, but is very nearly approximated in the following table, to wit:

Laurens County.....	1, 500
Oconee County.....	550
Pickens .....	250
Spartanburg.....	1, 800
Union .....	700
York.....	1, 000
Total .....	<u>5, 700</u>

Had these persons been permitted to vote, Colonel Wallace would have received a clear majority of 1,409, even allowing all the votes



returned for Mr. Simpson as having been fairly cast for him. Such, however, is not the fact.

The county of Spartanburg returned for Simpson 2,074 votes, and for Wallace 376, being a majority of 1,698 for the former. The evidence on pages 58 and 59 (book 1) shows that all the forms of law were entirely disregarded in this county, and that for this reason alone, if there were no other, the returns from this county could not be received.

W. MAGELL FLEMING, being duly sworn, says:

Question. What is your name, residence, and occupation?—Answer. W. M. Fleming; Spartanburg Court-House; attorney at law.

Q. How long have you resided in Spartanburg County?—A. Since 1862; and previous to that in Charleston.

Q. Were you in Spartanburg during the months of October and November, 1868?—A. Yes, except a few days, about the time of the election, when I was at Cokesbury, in Abbeville.

Q. Was there any political excitement in Spartanburg during the canvass?—A. There was considerable excitement.

Q. Were any improper measures resorted to to influence voters; and if so, by whom?—A. Threats of various kinds were made by the members of the democratic party. Resolutions were passed by the democratic clubs that no party voting the republican ticket should be employed in any way by the democracy. The persons and property of republicans were threatened.

Q. Did you hear any threats made against prominent republicans?—A. I heard threats made against all republicans who in any way supported the nominees of the republican ticket. Threats of personal violence were freely indulged in, and in several instances those threats were actually executed.

Q. Did you occupy any official position in the county; and if so, what?—A. I was commissioner of election for Spartanburg County, and chairman of the republican committee in that county.

Q. Were the managers of election in your county properly appointed and qualified according to law?—A. They were not. The commissioners did not receive their authority from the secretary of state until the day after the election was held; the postmaster having detained the letter containing their appointment from the 12th of October until the 2d of November, upon which last day he sent it to deponent's residence. In addition to this, the managers were appointed prior to the legal organization of the board, and after I met the board they allowed me to appoint one manager, they appointing eighty-nine managers, all democrats; and after the election was held, the report of said election was illegally made, and was, in point of fact as well as point of law, incorrect; for, whereas the election law requires that the commissioners of election organize themselves into a board of county canvassers, by the chairman of said commissioners administering to each one of the commissioners the constitutional oath as canvassers, no such oath was administered to each or any member of the said board of commissioners, and their pretended report was not sworn to, and was not only informal because of it not being sworn to, but also incorrect in that a number of votes polled for W. D. Smith were added to the vote of W. D. Simpson, while a number of votes reported by the acting managers as having been polled for James H. Goss were not mentioned in the said pretended report, nor were a number of votes cast for A. S. Wallace for elector noticed at all.

Deponent further submits that 1,460 of the votes credited to W. D. Simpson were incorrectly added to his pretended majority, inasmuch as the said 1,460 votes majority were reported by the commissioners of election, who were not sworn to the report; whereas the law requires said report to be made by the county canvassers, they being first sworn.

Q. What is the entire number of registered voters in Spartanburg County?—A. About 4,500.

Q. What was the number of votes cast at the election of the 3d of November, 1868?—A. About 2,060, according to the report of the commissioners.

Q. What is the difference between the registered vote and the vote cast as reported?—A. About 2,440.

Q. Was any improper conduct on the part of managers reported to you after the election as commissioner?—A. The managers of the election at Spartanburg precinct were reported to me for allowing the democratic committee to come behind the voting box with them, in order to examine the votes, contrary to law, which requires said votes to be polled folded; said democratic committee being there for the alleged purpose of examining the vote, thereby discovering who voted the republican ticket, and thus enabling themselves to execute their threat relative to said republican voters. I was informed by T. Stobo Farron, esq., a prominent democrat of Spartanburg, that



there was a similar committee at each voting precinct in Spartanburg County; said committees being sent by the local democratic clubs for the express purpose of showing the legislature the folly of their attempting to pass any act capable of shielding the republicans from the results of voting the republican ticket.

(Objected to as slanderous and hearsay.)

Q. Did you attend any republican meetings in Spartanburg County?—A. I did, and addressed several such meetings.

Q. Were any attempts made to disturb those meetings; and, if so, by whom?—A. We were universally interrupted, in some instances threatened, and at last twice compelled to discontinue the meeting. The disturbances were raised by parties claiming to be democrats; these men were mostly armed with pistols.

Q. Do you believe that any legally-registered republican voters were prevented from coming to the polls by threats and intimidations?—A. It is my opinion that a large number of republicans were prevented, by threats and intimidations, from voting, while others were induced by said causes to vote for the democratic candidates.

Q. What opinions did you hear expressed by the democrats in regard to the reconstruction laws and the State government organized under them?—A. They held that the reconstruction acts were illegal, unconstitutional, and void, and that the State government organized thereby was a usurpation of the rights of citizens of this State, and ought to be resisted by every means which God and nature had put in their power.

W. MAGILL FLEMING.

The evidence is also clear that in Oconee County from one hundred and fifty to two hundred fraudulent votes were given for Mr. Simpson, and it is equally well established that in every county many republicans were compelled to vote the democratic ticket and for Mr. Simpson, to save their lives. Our calculation as to those rejected votes is very much strengthened by the fact that the county of York, which gave Simpson 502 majority in the fall of 1868, gave a republican majority of nearly 400 in April, 1869, and the county of Laurens, which gave Simpson a majority of 714 in the fall of 1868, gave a republican majority of 200 in April, 1869.

Under any one of the three views here presented Colonel A. S. Wallace is entitled to the seat, and, when all these propositions are united, we consider the claim as conclusively and unanswerably established. The committee, therefore, offers the following resolution:

*Resolved*, That A. S. Wallace was duly elected a member of the forty-first Congress from the fourth district of South Carolina, and is entitled to the seat he claims in this House.

---

### WHITTLESEY vs. McKENZIE.

There were allegations of disloyalty in this case, which the committee held were not sustained. The report was adopted, *nem. con.*, June 17.

May 24, 1870.—Mr. Churchill, from the Special Committee of Elections, consisting of Messrs. Churchill, Butler, and Burr, made the following report:

*The Sub-committee of Elections, to which were referred the credentials of Lewis McKenzie, claiming to be a representative from the seventh congressional district of Virginia in the forty-first Congress, and also the memorial and notice of contest of Charles Whittlesey, contesting such claim, and claiming himself to have been elected such representative, submits unanimously the following report:*

At the election for representatives in the forty-first Congress from the State of Virginia, held on the sixth day of July, 1869, it appears from the evidence in the possession of the committee that in the seventh



congressional district of that State Lewis McKenzie received 15,878 votes, Charles Whittlesey 11,073 votes, and John T. Creighton 1 vote, and that thereupon Lewis McKenzie was declared duly elected representative in Congress from that district, and as such has been sworn in and permitted to take his seat, without prejudice, however, to the contest pending with respect to his right thereto. (Mis. Doc. No. 46, 2d Sess. 41st Cong., pp. 54-58.)

The contestant in his memorial and notice of contest (p. 1-4) raises no question as to the validity of the election or the correctness of the count, but alleges that the contestee was guilty of acts in the early part of the year 1861, which make him ineligible under the third section of the fourteenth article of amendments to the Constitution of the United States, and also make it impossible that he should truthfully take the oath of office prescribed by the act of July 2, 1862.

The following is the third section of the fourteenth amendment to the Constitution:

SEC. 3. *No person shall be a senator or representative in Congress, or elector of President or Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof; but Congress may, by a vote of two-thirds of each house, remove such disability.*

And the following is the oath of office above referred to:

I, A. B., do solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted nor attempted to exercise the functions of any office whatever, under any authority or pretended authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter: So help me God.

It appears, from the evidence in the case, that the sitting member before the late civil war had been repeatedly a member of the legislature of the State of Virginia, and it is not denied that as such he had taken an oath to support the Constitution of the United States.

The facts which are claimed by the contestant to incapacitate the sitting member from holding his seat are shown by the evidence, and are not disputed by the sitting member, and are the following:

1. On the 21st day of January, 1861, the house of delegates of Virginia, of which the sitting member was then a member, adopted, by a unanimous vote, one hundred and eight delegates voting, the following resolution:

*Resolved by the general assembly of Virginia, That if all efforts to reconcile the unhappy difference existing between the two sections of the country shall prove to be abortive, that, in the opinion of the general assembly, every consideration of honor and interest demand that Virginia shall unite her destiny with the slaveholding States of the South.*

The sitting member, Mr. McKenzie, was present and voted for this resolution.

2. On the 14th day of March, 1861, the senate of Virginia passed, with an amendment, and returned to the house of delegates for their concurrence, "An act to authorize the issue of treasury notes." A motion was made to lay the bill and amendment on the table. For this motion the sitting member voted, and in support of it made a speech,



of which the following is a report, which appeared in the Daily Richmond Whig, of March 15, 1861, and the substantial correctness of which is not disputed.

On the 14th day of March, 1861, in the house of delegates a communication was received from the senate announcing the passage of a number of bills, among them the house bill authorizing the issue of treasury notes, with an amendment striking out these words: "at any period."

The bill requires that the governor shall direct the auditor of public accounts to borrow for the Commonwealth of Virginia, from time to time, an amount not exceeding in the aggregate, at any period, one million of dollars.

In reference to the bill there was an animated discussion, in which some dozen members participated. Finally, the senate's amendment was concurred in and the bill passed.

During the debate, Mr. McKenzie said the house had been in session sixty-six days, and, until a few days ago, he had supposed the bill had become the law of the land. He had voted for this bill the time he did because he had believed it was important to the public safety. We had just voted that, so far as Virginia was concerned, we would not permit the coercion on the part of the federal government of any of the southern States. Having come to this conclusion, he, for one, was ready to vote means to arm the State, if need be.

When I was here before (said Mr. McKenzie) I found the governor then occupying the executive mansion had but few friends in this hall. Always disposed to do justice to my political opponents, I was willing and did sustain him in his course. I knew him a long while ago; we had belonged to the same party once; he was taken and I was left; but, notwithstanding this, I liked him. Now we have another honest John Letcher. I find him with but few supporters, and I promised him aid to carry out what is right, or any other governor. I believe he is a safe, prudent, conservative governor. The motion of my friend, Mr. Haymond, the distinguished chairman of the committee of finance, merely asks to lay the bill on the table for the purpose of making an amendment making the appropriation dependent upon the discretion of the governor. Why is there objection to this course? Does anybody presume that 170,000 voters of Virginia, a commonwealth extending from the Potomac to the Ohio River, a better armed State than any five States in the Union, are acting from any fear of the North? Virginia is not afraid. When the convention comes to a decision, and whatever they do, and it is ratified by the people, she will take her position, and, if necessary, fight. I think the opportunity ought to be given to amend, if necessary; and I shall, therefore, vote to lay it on the table.

The motion to lay on the table was defeated by a large majority, and the amendment of the senate was then concurred in and the bill passed by a unanimous vote, the sitting member voting in the affirmative.

3. On the 2d of May, 1861, the sitting member being then a member of the common council of the city of Alexandria, voted in favor of an appropriation of \$200 each to the Emmet Guards, and to the Irish volunteers, to aid in equipping these companies, which soon after entered the confederate service.

4. On the 30th of April and 6th of May, 1861, six hundred bushels of oats belonging to the sitting member were taken by the military authorities of the State of Virginia for the State, and were charged to the State on the account books of the sitting member.

It is not claimed that the sitting member has ever borne arms against the United States, or has himself engaged in insurrection or rebellion against them; and as the only government, aside from that of the United States, to which it appears that he has ever yielded any voluntary support, is that of the State of Virginia, and as the State of Virginia, in her organized capacity as a State, took no hostile position against the United States until, on the 23d day of May, 1861, she voted to ratify the ordinance of secession, adopted by her State convention, and as it is not claimed that the sitting member on or since that day was not an outspoken and consistent supporter of the Union, it will not seriously be pretended that he has ever yielded any voluntary support to any government or authority within the United States and hostile thereto.



The question, therefore, to be considered under the article of amendments to the Constitution and oath in question is whether the sitting member has given *aid or comfort* to the enemies of the United States, or counsel, countenance, or encouragement to persons engaged in armed hostility thereto, and thereby has rendered himself ineligible to the seat he now occupies.

The committee, after careful consideration, has concluded that none of the acts alleged and proven to have been done by the sitting member disqualify him for a seat in this House, or from taking the oath prescribed by the act of July 2, 1862.

The first of these acts alleged as a ground of ineligibility is the vote given by him on the 18th day of January, 1861, in the house of delegates of Virginia, of which he was a member, for an act entitled "An act to authorize the issue of treasury notes." By this bill the governor of the State was authorized, "*for the purpose of raising means for the defense of the State,*" to direct the auditor of public accounts to borrow, from time to time, an amount not to exceed the sum of one million dollars, and to issue therefor treasury notes. The bill was one which it was competent for the legislature of Virginia to pass, and voting for it cannot be said to have been an act *in itself* hostile to the United States. The State was a State in the Union, fully represented in both houses of Congress, with a considerable majority of the members of her legislature favorable to a continuance of the Union, and there was existing at the time a state of alarm and uncertainty as to the future, which might well seem to make it proper that the legislature should give attention to the defenses of the State. Doing so was not a usurpation of any of the prerogatives of the general government, and the fact that the vote in the house was unanimous in its favor is evidence that it was not considered by the Union men of that body as an act of hostility to the United States. Most of the States of the North were at the same time providing means for their defense, and tendering men and money to uphold the general government in its rightful authority, and, although actuated by a very different spirit from that which actuated the legislature and people of Virginia, the right of the latter to provide means to defend the State was the same as the former. Each hoped the conflict might be avoided, though with sympathies widely variant, should that hope be disappointed. On the previous day, (January 17, 1861,) the house of delegates, by a nearly unanimous vote, the sitting member voting in the affirmative, had adopted resolutions calling a convention of commissioners from all the States to meet at Washington on the 4th day of February, 1861, to consider and agree upon some plan of adjustment of the existing difficulties, and there is nothing to throw doubt upon the sincerity of the sitting member and of those voting with him at that time in their professions of desire for such an adjustment.

The next act complained of is the vote of the sitting member, three days after the above, on the 21st day of January, 1861, for a resolution declaring—

That if all efforts to reconcile the unhappy differences existing between the two sections of the country should prove to be abortive, in the opinion of the general assembly, every consideration of power and interest demanded that Virginia should unite her destinies with the slaveholding States of the South.

This, it will be perceived, was not a resolution authorizing any action, but the expression of an opinion as to what the course of Virginia *should be* in a certain contingency, and was undoubtedly intended to influence the northern, and not the seceded States, by making the former readier to listen to and accept terms of accommodation that might be satisfac-



tory to the latter. This, too, was unanimously adopted, every Union man present and voting—voting for it. While we disagree entirely from the sentiment expressed by the resolution, and while subsequent events proved its incorrectness in the terrible punishment that fell upon Virginia for pursuing the course here indicated, as that to which *her interest* as well as her honor pointed her, the committee is unable to see in its support an act of such treasonable character as would work a disqualification of the sitting member for the seat he occupies.

The third act was on the 14th day of May, 1861, when the above-mentioned act to authorize the issue of treasury notes came back from the senate with a slight amendment, which was concurred in by the house of delegates, and the bill passed by a unanimous vote of the house. What has been said above as to the vote of the sitting member, when this bill was first before the house, may again be repeated here.

The situation had become much graver and more complicated. But Virginia was yet in the Union; her senators were on that very day in their seats in the Senate of the United States, and taking part in the discussion as to what should be done with the seats of senators whose States had adopted ordinances of secession, and it was yet the purpose and the hope of the Union men of the State that the State should remain in the Union. The speech made by the sitting member on this occasion in the house of delegates is urged as giving character to his vote, and as furnishing independent evidence of his ineligibility. In this speech, referring to his former vote upon this bill, he said that he then voted for it because he regarded it important for the public safety; that they had just voted that, so far as Virginia was concerned, they would not permit the coercion on the part of the federal government of any of the southern States, and that, having come to that conclusion, he was ready to vote the means to arm the State, if need be.

The journal of the house of delegates shows that the sitting member did not vote for this resolution relating to coercion, but the house having adopted it, he was willing to vote whatever was necessary to give the State the means for her defense.

At the time when this vote was given and this speech made, many of the warmest friends of the Union, North and South, doubted the right of the general government to coerce a State. The right had been explicitly denied by the head of the last administration, and the new President had failed to avow it, or, at least, any purpose to exercise it.

The language of President Lincoln in his inaugural message is so significant that I quote it:

The power confided to me will be used to hold, occupy, and possess the property and places belonging to the government, and to collect the duties and imposts; *but beyond what may be necessary for these objects, there will be no invasion, no using of force against or among the people anywhere.* When hostility to the United States in any interior locality shall be so great and universal as to prevent competent resident citizens from holding federal offices, there will be no attempt to force obnoxious strangers among the people for that object. While the strict legal right *may* exist in the government to enforce the execution of their offices, the attempt to do so would be so irritating, and so nearly impracticable withal, I deem it better to forego for the time the uses of such offices.

If the President of the United States, himself from a free State, could make so guarded a statement of the right of the government in this respect, we can pardon something to words spoken by a southern man in the heat of debate, concurring in the action of the house of delegates in denying the existence of a right which the President himself had not ventured distinctly to claim, and expressing a readiness to make that denial effective. When the time came, as it soon did, when he was



obliged to act with reference to this question, he took sides definitely and firmly with the friends of the Union.

The charge that he voted money to equip men for the confederate military service is not sustained by the evidence. By a law passed the previous winter, it had been provided that counties and municipalities should have power to arm, in their discretion, such portion of the militia of their localities as might be without arms. On the 23d of April, 1861, a committee was appointed by the common council of Alexandria to confer with the county court on the subject of an appropriation for the volunteer companies of Alexandria. Mr. McKenzie was a member of the common council and present at the meeting, but it does not appear that he voted upon the appointment of the committee.

At a special meeting of the common council, held on the 2d day of May, 1861, this committee reported in favor of a joint appropriation by the city and county of \$2,500, to be divided among nine companies named in the report. Mr. McKenzie moved as a substitute for the report that \$200 to each be appropriated to aid in equipping the Emmet Guards and Irish Volunteers, and, though at first lost, was at last substantially adopted. This action was taken nearly three weeks before the people of Virginia voted upon the ordinance of secession, and while the State was yet in the Union, and when (as the witness Hefflebower testifies, page 80) "there was yet great reason for hoping it would not go out." These companies were companies of Virginia militia, not in the confederate service, nor does it appear that they then contemplated entering that service, although they did so enter immediately after the secession of the State, and continued therein till the close of the war. But the action of Mr. McKenzie was regarded by the friends of secession at the time as opposed to them, and as in the interest of the Union cause. George T. Whittington, a witness called by the contestant, who was a member of the common council at the time, and who made the report in favor of the appropriation of \$2,500 for equipping these companies, and who, in June, 1861, became a lieutenant in one of them, says:

The original amount offered was \$2,500, but Mr. McKenzie moved the amendment of \$200 for the purpose of killing the bill, and received abuse from me and others for his action. It was so considered by Mr. McKenzie's friends that his action in regard to the appropriations was loyal Unionism in Alexandria at that time.

The testimony of Hefflebower (page 80) shows how this action was regarded by the Union men of Alexandria at the time.

As to the grain charged to have been furnished by the sitting member to the provisional confederate government, the evidence shows that it was taken by the military authorities of the State of Virginia. Charles E. Stewart, who was a colonel of Virginia militia, and in command of the city of Alexandria under the authority of the governor of the State, says, (page 77:)

The grain of Mr. McKenzie I directed, knowing him to be disloyal to the State of Virginia, to be watched, with any other merchandise or property he possessed, and to be seized whenever wanted, and under that general order his was seized.

George T. Whittington says, (p. 37:)

I know that there was grain taken from his warehouse on a Sunday afternoon; the exact date I do not remember. I went with the detail by order of the colonel in command. It was taken for the use of the confederate service.

There is no evidence whatever that he sold or voluntarily parted with the grain so seized, while there is evidence that he refused to sell to the State troops, telling one of their officers, who said it might be seized, "I cannot help that, but I can help selling," (p. 90.) The fact that he took a receipt for the grain, or that he charged it to the State of Vir-



ginia, proves nothing to the contrary of the above evidence, since the evidence shows the seizing officers were directed by the colonel in command to give such receipts on making seizures, (p. 78,) showing that the property was taken for the State of Virginia, and to be paid for by the State, and that they were actually given, (p. 37,) and the charge in the books of the sitting member might well be made in the hope that at some future time he might obtain payment from the State for the property so taken.

A good deal of evidence in this case was taken to show that the sitting member before, during, and after the occurrence of the acts charged as making him ineligible, was known and accepted generally by all, both the loyal and the disloyal people of his acquaintance in Alexandria and vicinity, as a friend of the Union cause. It is well argued by the contestant that this cannot be received as a defense for two reasons: first, that the sitting member has served no answer in this case, as required by the laws, and, therefore, cannot set up in the evidence any matter by way of defense to the charges of the contestant, except such as may tend to negative the charges; and second, that if the acts make him ineligible, neither prior, subsequent, nor contemporaneous loyalty could make him eligible, or do more than furnish a ground for him to ask to be relieved from his disabilities. But this evidence, though not receivable as a defense, is properly to be received, as enabling us the better to understand the acts themselves, and to determine their true character.

The evidence of George T. Whittington, (p. 37,) a witness called by the contestant, and who was a member of the common council of Alexandria, with the sitting member, in the spring of 1861, and was also an active supporter of the secession movement, is as follows:

Question. How long have you known Lewis McKenzie?—Answer. I have known him all my life.

Q. Have you always regarded him as a Union man, and has he been so generally esteemed?

(Objected to by contestant, for reasons before stated to similar questions.)

A. Most undoubtedly; he has been an anti-slavery man for a number of years, ever since I have known him.

Q. Did you serve in the common council in April and May, 1861, with Lewis McKenzie, Wm. D. Massey, Andrew Jamieson, Allen C. Harmon, and Samuel Miller? and, if yes, state whether they were not regarded as devoted Union men.

(The contestant objects to the latter part of the interrogatory for reasons stated before.)

A. I did serve with them, and regarded them as Union men.

Q. Was the fidelity of either of these gentlemen to the Union cause called in question by reason of their votes in the common council upon the subject of equipping volunteer companies?

(Objected to by contestant for reasons stated before.)

A. It was not; on the contrary, they got a great deal of abuse from persons representing the secession view of the question.

Q. Was not Mr. McKenzie, prior to the secession, active and earnest in his opposition to that movement; and how did he vote?—A. He certainly was; but how he voted I do not know. I was not in town.

Q. While in the common council, did you not regard Mr. McKenzie as doing his best to obstruct and defeat all appropriations for the equipment of troops for the confederate service?

(Objected to by contestant, because it calls for the witness's opinion upon Mr. McKenzie's acts, and not for the acts themselves.)

A. Certainly; most undoubtedly he did.

The evidence of Colonel Charles E. Stewart, (pp. 77, 78,) also an active secessionist, and who was in command of Alexandria under orders from the governor of Virginia, in the latter part of April and first of May, 1861, is as follows:

Question. State your age, profession, and residence.—Answer. My age forty-four;



my profession is attorney at law; and am a native and resident of Alexandria, Virginia.

Q. State if, prior to and at the time of the passage of the ordinance of secession, you held any military position in Alexandria; if so, what, and under what authority?—A. Some two or three years prior to the ordinance of secession I was elected, under the laws of the Commonwealth of Virginia, colonel of the One hundred and seventy-fifth regiment of the Virginia militia, which embraced the volunteer and militia force of the city and county of Alexandria; I was commissioned by Governor Henry A. Wise; and at the time of the ordinance of secession I was in command of the city of Alexandria by the authority of Governor John Letcher, and by his orders through the adjutant general of the State, William H. Richardson.

Q. While so in command, did you issue any orders for the seizure of quartermaster and commissary stores; and, if yes, whether any grain or property belonging to Mr. McKenzie was seized and taken for the use of your command?—A. About the time of the passage of the ordinance of secession I received information that the agents of the United States government had purchased large numbers of cattle in the upper country, which were on their way to Washington; and were also purchasing in Alexandria, from Mr. McKenzie and other merchants, large quantities of quartermaster and commissary supplies for the federal troops then in and approaching Washington. There were several canal-boats and one steamboat being loaded with supplies of that description, when I issued an order to intercept the cattle, and sent a detachment for that purpose on to the Chain bridge and one to the Long bridge, who reported to me that they did intercept the cattle; and another detachment to the canal-boats and the steamboat to prevent the loading of the supplies; whereupon I telegraphed to Governor John Letcher, who had ordered me to keep him informed of all I did, by telegraph; to which I received the original telegram filed herewith, and marked Exhibit No. 3, and made a part of these depositions. I had established my headquarters in a room adjoining the telegraph office, on the second floor of Arnold's building, corner of King and Royal streets. I was informed, after issuing the orders for seizing these supplies, that Lewis McKenzie had sent a telegram to the authorities at Washington of a nature disloyal to the State of Virginia, and was urged to arrest him and send him to Richmond; but being on terms of personal enmity to Mr. McKenzie, I refused to do so, but took possession of the telegraph office and placed a sentinel at the door, which was just opposite my headquarters, and allowed no telegram to be issued to Washington or elsewhere, without my own supervision, or that of one of my officers, or some one appointed for that purpose. The grain of Mr. McKenzie I directed, knowing him to be disloyal to the State of Virginia, to be watched, with any other merchandise or other property he possessed, and to be seized whenever wanted; and under that general order his was seized.

Q. Prior to, and at the time of the adoption of the ordinance of secession, in May, 1861, what had been and were Mr. McKenzie's political sentiments, and how his political status was regarded here by people of all parties?—A. Mr. McKenzie was regarded by me and by the community as an abolitionist, or a man favorable to emancipation, and as an uncompromising Union man under all circumstances. As a supporter of James Buchanan, I publicly denounced him as an abolitionist in a public speech at the market-house.

Q. Were your orders relating to quartermaster and commissary supplies, to which you have referred, issued against Union men as a class, or generally, to have such supplies taken whenever necessary, wherever they could be found, without discrimination as to whether the possessors were secessionists or not?—A. My orders were general, no persons that I know of having openly avowed themselves unconditional Union men, with the exception of Judge Wylie, Lewis McKenzie, and Sewal B. Corbitt; these were the only ones that I heard of. There was no discrimination in the world, except that I ordered the warehouse of Lewis McKenzie to be watched, to prevent supplies being sent to Washington for the federal troops. This was by verbal order.

The evidence of William B. McClure (p. 90) is as follows:

Question. State your age, residence, and occupation.—Answer. I am forty-five; I reside in Fairfax County, near Alexandria; am clerk or agent for Lewis McKenzie.

Q. How long have you known Lewis McKenzie, and how was he regarded as to his Union sentiments prior to and after the ordinance of secession?—A. I have known him for twenty years; I regard him as the most devoted Union man I have been acquainted with, and I think he was also regarded in that light by all old residents here.

Q. Will you state, during the occupancy of Alexandria by the Virginia State troops, shortly after the passage of the ordinance of secession by the convention, any acts of Mr. McKenzie tending to show his devotion to the Union and opposition to secession?—A. The Monday following, or the 19th day of April, I may not be correct as to date, a number of young men in uniform and out of uniform pinned to their hats or their coats what were called secession cockades. Some of those young men were employed



as clerks by various merchants in Alexandria, and, in their capacity as clerks, called at Mr. McKenzie's office to collect accounts, and came there wearing these secession cockades. One of them, named Kemper, Mr. McKenzie being more intimate with, he pulled the cockade from him and trampled it under foot, and told him if he went on that way he would get hung. The others he ordered out of the office, saw them to the door of the warehouse, and said he would pay no bills to any one wearing secession colors, but would send me around and pay their employers. A soldier in uniform, and armed, said: "If I put on those colors, would you, Mr. McKenzie, turn me out?" "Yes," replied Mr. McKenzie, "or at least I would try." Mr. McKenzie went, accompanied by me, to a German ship Mr. McKenzie was loading with grain for Liverpool. On her deck were several young men sent there to see the grain bought was correctly weighed. These young men had on secession cockades; Mr. McKenzie ordered them off the deck; on their refusing, he got the captain to turn them off, refusing to receive any grain accompanied with secession colors. The young men complied then, and took down their cockades. This produced much hostility to Mr. McKenzie, and led to the military order, I believe, forbidding the loading of the vessel, and caused her to go to New York to get a cargo, thus shutting out the oats we had in store for her. Another act of hostility, as I view it, to the State troops was, he refused to sell them oats; then they seized fifty bushels. In a few days they came again and sought to buy oats; Mr. McKenzie refused. "Perhaps they will be seized," said one of the officers. "I cannot help that," replied Mr. McKenzie, "but I can help selling." Another act of hostility to the State troops, as I view it, was, a Captain Towson was getting up a company largely composed of Irishmen. Mr. McKenzie found that some of them had enlisted through fear; that some of them were British subjects. These he got released as such; some of them he gave money to to desert and go North with. Captain Towson found this out, and came to Mr. McKenzie complaining of it; said it was treason to the State, and if persisted in would prove a hanging matter. McKenzie's reply was, in effect, "Towson, you'll get hung first if you don't mind what you are doing. I don't think Virginia has need of soldiers." I also often heard McKenzie advise officers and soldiers of the danger that might arise if their course was persisted in; he hoped the State would never ratify the ordinance of secession. In fact, from my intimate and confidential relations with Mr. McKenzie, at that time, I found him incessantly at work to counteract, as far as he could, all tendencies to secession on the part of the people.

We conclude that nothing shown in the evidence in this case makes the sitting member ineligible under the fourteenth article of amendments to the Constitution of the United States, or debars him from taking the oath prescribed by law, and this makes it unnecessary for us to consider the question very ably presented by the contestant in his argument, as to the effect of such ineligibility, if shown, upon votes cast for the sitting member; and we conclude with recommending to the House the adoption of the following resolutions:

*Resolved*, That Charles Whittlesey is not entitled to a seat as a member of the forty first Congress from the seventh congressional district of Virginia.

*Resolved*, That Lewis McKenzie is entitled to a seat as a member of the forty-first Congress from the seventh congressional district of Virginia.

#### DARRALL vs. BAILEY.

Allegations of intimidation and violence. Held by the committee that the precincts or parishes where violence and intimidation prevailed should be thrown out, and the result deduced from the returns in the peaceable parishes.

The House sustained the report, (July 2,) 67 to 64. A motion to reconsider was made, and it was laid on the table, (July 6:) yeas, 96; nays, 77.

April 28, 1870.—Mr. Stevenson, from the Committee of Elections, made the following report:

*The Committee of Elections, to which were referred the contested election cases from the State of Louisiana, submits the following report:*

The third congressional district of the State of Louisiana comprises



the following parishes: St. Mary, St. Martin, Assumption, Ascension, Vermillion, Calcasieu, Lafayette, St. Landry, Iberville, East Feliciana, East Baton Rouge, and West Baton Rouge.

The official returns of the congressional election in November, 1868, are as follows:

*Returns of votes cast for member of Congress in the third district, State of Louisiana, November 3, 1868.*

Parishes.	Bailey.	Darrall.
St. Landry.....	4,683	.....
Lafayette.....	1,420	.....
Vermillion.....	957	.....
St. Mary.....	1,814	1,132
Assumption.....	1,365	1,383
Ascension.....	1,119	1,490
Iberville.....	703	2,086
West Baton Rouge.....	433	585
East Baton Rouge.....	1,350	1,246
East Feliciana.....	1,408	644
Calcasieu.....	813	2
Total.....	16,065	8,568

I hereby certify that the above is a correct copy of the returns from the third district, State of Louisiana.

GEORGE E. BOVEE,  
*Secretary of State, Louisiana.*

NEW ORLEANS, February 1, 1869.

The parish of St. Martin was omitted because there was no legal return, and this defect has not been cured nor supplied by other evidence. Upon these returns an informal and imperfect certificate was issued to the contestee.

#### THE ISSUE.

##### The contestant alleges—

1. That the vote of the parish of St. Martin was properly rejected by the board of canvassers of this State for want of legal returns, and should be rejected for the same reasons by the House of Representatives.

2. That all the votes of the parishes of *St. Landry, St. Martin, St. Mary, Vermillion, and Lafayette*, cast at the said election of November 3, 1868, should be rejected, and the election in the said parishes be declared null and void; and this for the reason that, at the time of and before the election, there prevailed in all of said parishes a state of anarchy, a total absence of all civil or military authority able or willing to keep the peace, or to protect life, or to secure a free and fair expression of the will of the people at the ballot-box.

That there existed in all of said parishes a condition of intimidation and terror, brought on and kept up by the democratic party of those parishes, so great and universal as to make it dangerous to life for the people to express their political sentiments or to vote according to the dictates of their judgment; that during this condition of anarchy the presses of the party to which I belong in those parishes were destroyed, and the editors murdered or driven from the country; that all the known leaders of the party to which I belong were either murdered or driven from their homes, and this condition of anarchy compelled the people remaining in said parishes for the most part either to refrain from voting at all, or else to vote with the democratic party; and this they were compelled to do in order to save their lives and property.

That all voting in these parishes was done under duress and coercion, and should be considered null and void on the proof of the above allegations.

And further, that in the remaining parishes of East Feliciana, East and West Baton Rouge, Iberville, Assumption, Ascension, and Calcasieu, where the election was con-



ducted with any degree of fairness, I received a majority of the votes, and am entitled to the seat.

The contestee denies the allegations of violence and says:

*Fourthly.* The election held in the third congressional district, on the 3d day of November, 1868, was a valid election. Both parties allege that it was, and claim seats in virtue of it. The House, sustaining the views of the majority of the Committee of Elections in the contested case of *Hunt vs. Sheldon*, held that violence and fraud in one or more parishes of a district might warrant the exclusion of the votes of those parishes, but did not invalidate the election as a whole.

*Fifthly.* Contestant's averment of fraud and intimidation is specially denied.

Both parties affirm the validity of the election in seven parishes, while the contestee affirms, and the contestant denies, the validity of the election in five parishes, including St. Martin, from which there is no valid return, and which must, in any event, be rejected.

#### THE REGISTRY—WHITE AND COLORED.

The number of registered electors in the district was .....	28, 486
Of colored electors.....	18, 881
Majority of colored voters.....	<u>9, 276</u>

The colored nearly double the white voters.

#### PEACEABLE AND VIOLENT.

The entire registry .....	28, 486
That of the seven uncontested parishes was.....	15, 294
That of the contested parishes .....	13, 192
A majority in the peaceable parishes of .....	<u>2, 102</u>

#### THE VOTE.

The vote cast, (including the alleged vote of St. Martin, of which there is no return,) was.....	26, 106
The vote in the uncontested parishes was.....	14, 627
The vote in the contested parishes, (including alleged vote of St. Martin,) was.....	11, 479
Majority in the peaceable parishes.....	<u>3, 148</u>

There can be no question, therefore, whether there was a valid election in the part of the district which is uncontested. It contained nearly two-thirds of the territory, and a large majority of registered electors and of actual voters.

#### THE CONTESTED PARISHES.

In the parishes which are contested, viz., St. Landry, St. Mary, Lafayette, St. Martin, and Vermillion, the number of registered electors was 13,192, of whom 7,817 were colored, as follows:

St. Landry .....	3, 102
St. Mary .....	2, 085



Lafayette.....	766
St. Martin.. ..	1,618
Vermillion.....	246
Total .....	<u>7,817</u>

A majority of registry.

At the April election, 1868, these parishes cast 6,322 republican votes.

At the November election the republican vote was reduced to 1,155.

In *three* of these parishes the contestant received not one vote, viz., St. Landry, Lafayette, and Vermillion, where there were 4,114 colored electors registered.

In St. Martin there are said to have been cast but twenty-five republican votes, though there were 1,618 colored voters. In St. Mary a part of the republican vote was cast under cover of troops who arrived in the parish the *night before the election*, too late for the fact to be generally known, or for the people to be reassured.

In this parish there were 2,200 colored voters; and the republicans cast 2,048 votes, and carried the parish in the spring by a heavy majority, Dr. Darrall, the present contestant, receiving a majority of 1,218 for State senator.

#### VIOLENCE.

These results were procured by violence. The bloodiest rioting and the darkest deeds which were done in the State were committed in these contested parishes of this district.

#### ST. LANDRY.

St. Landry is a rich sugar and cotton-planting parish on the river Teche. The whites are generally of French descent. They were thoroughly rebellious and never conquered. There were some old whigs, some Germans, and some new settlers who were republican. *There was a colored majority.*

The canvass was active and sharp; both parties were well organized: the republicans into clubs, and the democrats as Knights of the White Camelia.

The republicans had processions and mass meetings, and mustered about 2,500 voters, when armed democrats appeared at a republican meeting and disturbed it.

Mr. Emerson Bently, school-teacher and editor of the republican paper, noticed the disturbance, and thereupon he was attacked in his school-house among his pupils by men, who, leveling their revolvers upon him, beat him severely. The frightened children ran out, giving the alarm, and crying that Mr. Bently was killed. This spread terror among the colored people and excited the whites. A white republican was shot. Alarming rumors arose and flew abroad that the whites were killing the colored people, and that the colored were arming for fight. The whites took possession of Opelousas, and dispatched couriers to every part of the parish to call in the Knights of the White Camelia. One or two colored couriers escaped and gave excited accounts to their friends.

As fast as the news spread, the excitement grew. Armed bands of white men scoured the country. A party, mounted and fully armed,



attempted to capture some colored men who were collected at Paillet's plantation, near Opelousas. Firing ensued. Several whites were wounded, and four colored men killed and one wounded, and the rest surrendered and were taken prisoners to Opelousas, and lodged in jail with other captives.

During that day and night the entire body of democrats of the parish gathered in Opelousas, and it is estimated that twenty-five hundred men were there, fully armed and equipped for war. At night they took the prisoners from the jail, in the presence and with the consent of the deputy sheriff and jailor, and killed them, and it has not yet transpired who were the murderers.

There was no appearance of resistance by the colored people. Many gave themselves up voluntarily, and received a badge of protection, but the majority remained quietly in the country, at their cabins, or fled to the swamps. A prudent and peace-loving colored man in Opelousas sent word to them to be quiet. Yet, on the next day, the force of over two thousand Knights of the White Camelia, without reason or provocation, rode through the parish "hunting negroes" and killing them on sight; and the result was that they killed over two hundred colored men, and wounded many more, while no white man was harmed in return. This riot broke up the republican party. The parish continued for weeks in a state of siege and terror. No colored man could move without a *badge* or a certificate of protection.

The "colored democratic" clubs were opened by the whites, and republicans were compelled to join them and vote the democratic ticket. A few days before the election, a white man who went into the parish to deliver republican tickets was captured, the tickets taken, and he sent out of the parish, followed by armed men, who hunted him day and night, and he barely escaped alive. No republican vote was cast. Even while the committee sat in New Orleans, nine months after the election, a company of troops were unable to protect republicans in the parish.

#### ST. MARTIN

adjoins St. Landry. The riot extended to this parish, and a number of colored men were killed and wounded. The Ku-Klux Klan and the Knights of the White Camelia had control, and the republicans were under terror. No legal election was held, even in form, and the pretended election was void for violence.

#### LAFAYETTE.

This parish also adjoins St. Landry, and was under riotous control of Ku-Klux and Knights of the White Camelia, and a number of colored republicans were killed and wounded.

#### VERMILLION

was also under the rule of violence, though to a less extent; republicans were obliged to join the democratic clubs and take protection papers, and vote the democratic ticket. No republican votes were cast.

#### ST. MARY.

In this parish the local officers were republican, and though the feeling was high and bitter against the party, and the Ku-Klux Klan and



Knights of the White Camelia were active, yet comparative order and security were maintained until October 17, 1868, when a band of Ku-Klux in disguise rode into Franklin, the parish seat, at night, surrounded the house where Judge Chase, parish judge, and Colonel Pope, the sheriff, then were, and assassinated them both, and left their bodies where they fell. The murderers then rode out of town, and their names are still unknown except to their confederates.

This deed struck terror into the republicans of the parish and shocked every friend of order throughout the State. It was preceded, accompanied, and followed by threats against every man who dared to stand up for the republican party. The effect was that not half the republicans voted the ticket, and these could not have done so if troops had not come into the parish on the night before the election.

Colored men were here, as in other parishes, compelled to join democratic clubs and vote the democratic ticket, to save themselves and their families.

#### CONCLUSION.

We conclude that the returns from these violent parishes should be rejected, and those from the peaceable parishes only counted.

The result in the peaceable parishes was as follows :

	Darrall.	Bailey.
East Feliciana .....	644	1,408
East Baton Rouge .....	1,246	1,350
West Baton Rouge .....	585	433
Iberville .....	2,086	703
Assumption .....	1,383	1,365
Ascension .....	1,490	1,119
Calcasieu .....	2	813
Total .....	7,436	7,191
	7,191	
Majority for Darrall .....	245	

It may be added that the general condition of the State affected the republican vote in these parishes, and that if peace and quiet had prevailed through the State, the republican majority would have been much heavier, and in the whole district the contestant would have received a large majority. The colored registered vote of the district was nearly double the white, and many white men would, if permitted, in peace, have sustained the republican party. We therefore feel that the result reached is not only legally correct, but that it carries out the will of a very large majority of the people of the district, while it vindicates the rights of the people we are bound to protect.

We therefore recommend the adoption of the following resolutions:

*Resolved*, That Adolphe Bailey is not entitled to a seat as representative in the forty-first Congress from the third district of Louisiana.

*Resolved*, That C. B. Darrall is entitled to his seat as representative in the forty-first Congress from the third district of Louisiana.



## BARNES vs. ADAMS.

Ex-rebel soldiers have a right to vote for members of Congress in Kentucky, there being no law to the contrary.

Where election officers were not appointed in accordance with law, it was held that they were *de facto* officers, and that the election was not necessarily vitiated.

The acts of *de facto* officers, so far as they affect third parties or the public, in the absence of fraud are as valid as those of *de jure* officers.

There were allegations of fraud and intimidation.

The House adopted the report (July 5) *unm. con.*

May 23, 1870.—Mr. McCrary, from the Special Committee of Elections, consisting of Messrs. Brooks, Dox, and McCrary, made the following report:

*The Committee of Elections has had under consideration the contested election case of Sidney M. Barnes against George M. Adams, from the eighth district of Kentucky, and reports as follows:*

The testimony, covering over eight hundred pages of closely-printed matter, and the somewhat elaborate arguments of the respective parties to the contest, have been examined with that care and labor which, in our judgment, the importance of the case itself, and of the principles involved, demanded. The official vote is reported as follows:

For Adams .....	10, 323
For Barnes .....	9, 861
Majority for Adams .....	<u>462</u>

Although the contestant has set forth in his notice of contest sixty-nine specifications, it will be found upon an examination of the evidence that the following is a correct summary of—

## THE ISSUES IN THE CASE.

1. Contestant alleges that a large number of persons who served in the rebel army voted for contestee. Contestee answers, denying the charge, and averring that these persons are and were legal voters in the State of Kentucky.

2. Contestant alleges that at certain of the polls persons acted as officers of election who were not competent under the laws of Kentucky so to act, by reason of having adhered to the rebellion, or joined in the effort to separate Kentucky from the federal Union by force of arms. Contestee answers to this that such persons were not disqualified from acting as judges of election under a proper construction of the statute of Kentucky; also, that such persons, when acting as judges of election, were officers *de facto*, and their acts were not void as to third persons; also, that at certain precincts at which contestant received majorities the same class of persons acted as officers of and conducted the election.

3. Contestant alleges that, by the law of Kentucky, the officers of election at each poll must be equally divided between the two political parties, so long as two distinct political parties continue to exist in that State, unless it appear that not a sufficient number of competent persons of one or the other party can be found to act. And he also alleges



that this statute was violated, and that at many of the polls where contestee received majorities the officers of election were not equally divided between the two parties then organized and existing in Kentucky, to wit, the democratic and republican parties. To this contestee answers that the failure to divide the election officers equally between the two parties did not render the election void in the absence of fraud. He further answers that at many of the polls where contestant received majorities the officers of election were not equally divided between the two political parties.

4. Contestant further alleges in his argument, but not in his notice of contest, that the judges and other election officers at certain of the election precincts were not sworn at all, and at others were not sworn according to the constitution and laws of Kentucky, and that therefore their acts as such officers are void, and the returns from such polls must be rejected. To this contestee answers, first, that as this point was wholly omitted in the notice of contest, there is no allegation to support the proof upon this subject, and therefore it cannot be considered; and, secondly, that officers who acted without being duly sworn were officers *de facto*, and their acts were not void, and that the returns in the absence of fraud should not be rejected.

5. It is alleged by contestant that at certain of the precincts at which a majority of the votes cast were for contestee, there were fraud and intimidation sufficient to prevent a fair election, and require the House to reject the vote of such precincts. This is denied by contestee.

6. It is alleged by contestant that a large number of illegal votes were cast for contestee at certain precincts by sundry persons who are designated in the notice and testimony, and among them by persons who were not permanent residents of the district, being railroad hands temporarily employed therein, with no intention of remaining. This is denied by the contestee, and he also alleges that many illegal votes were cast for contestant.

7. It is alleged by contestant that certain persons who were deserters from the Union army during the rebellion voted for contestee. This is denied by contestee. He also denies that the votes of such persons were illegal, and further alleges that persons of this class voted for contestant.

8. Contestant alleges that certain poll-books are not duly certified. Contestee denies this, and also makes a similar allegation with regard to certain other poll-books.

It will be seen that the case presents a number of important—

#### QUESTIONS OF LAW.

These will, therefore, be first considered, in order that the House may determine what the law is, and be enabled to apply such proof as is material, and discard such as is not.

#### THE RIGHT OF EX-REBEL SOLDIERS TO VOTE IN KENTUCKY.

There is no law of the United States, or of the State of Kentucky, disfranchising the persons who were common soldiers in the rebel army. It is well known that these persons are legal voters under the laws of most of the States of the Union. They are clearly entitled to vote under the constitution and laws of Kentucky for members "of the most numerous branch of the State legislature," and are, therefore, entitled



to vote for members of Congress under the provisions of section 2, article 1, of the Constitution of the United States, which declares :

The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

In the case of *McKee vs. Young*, in the last Congress, the House rejected the votes of certain rebel soldiers, but it was done upon the ground that at the time of the election at which they voted they were in actual organized, armed hostility to the United States. Although the rebel soldiers who voted were at home on *parole*, they were held to be actually in the rebel army, and it was insisted that to allow them to vote would be equivalent to saying that an army, organized for and engaged in an effort to destroy the government of the United States, might vote for members of Congress. The case now before us is, however, very different. When this election took place more than three years had elapsed since the close of the rebellion, and the armed hostility to the government had long since ceased. With the policy of disfranchising those who took arms against the government the committee has nothing to do. It is simply a question of law, concerning which we can entertain no doubt.

#### THE ELIGIBILITY OF OFFICERS OF ELECTION.

In 1858 the general assembly of Kentucky passed the following act :

[Myer's Supplement, p. 456.]

AN ACT to amend section 1, article 1, chapter 32, title "Elections," of the Revised Statutes.

*Be it enacted by the general assembly of the Commonwealth of Kentucky*, That hereafter, so long as there are two distinct political parties in this Commonwealth, the sheriff, judges, and clerk of election, in all cases of elections by the people under the Constitution and laws of the United States, and under the constitution and laws of Kentucky, shall be so selected and appointed as that one of the judges at each place of voting shall be of one political party, and the other judge of the other or opposing political party; and that a like difference shall exist at such place of voting between the sheriff and clerk of election: *Provided*, That there be a sufficient number of the members of each political party resident in the several precincts, as aforesaid, to fill said offices. And this requirement shall be observed by all officers of this Commonwealth who have the power to appoint any of the aforesaid officers of election, under the penalty of a fine of one hundred dollars for each omission, to be recovered by presentment of the grand jury.

And in 1862 the same general assembly passed the following act, amendatory of the foregoing :

[March 15, 1862.]

AN ACT to amend an act, entitled "An act to amend section 1, article 3, chapter 32, title 'Elections,' of the Revised Statutes," approved February 11, 1858.

SEC. 1. That in construing the act approved February 11, 1858, to which this is an amendment, those who have engaged in the rebellion for the overthrow of the government, or who have in any way aided, counseled, or advised the separation of Kentucky from the federal Union by force of arms, or adhered to those engaged in the effort to separate her from the federal Union by force of arms, shall not be deemed one of the political parties in this Commonwealth within the provisions of the act to which this is an amendment.

SEC. 2. This act to take effect from and after its passage.

Under these statutes two questions are raised :

1. Whether, by a fair construction of the two acts together, a person who "engaged in the rebellion for the overthrow of the government, or in any way aided, counseled, or advised the separation of Kentucky from



the federal Union by force of arms, or adhered to those engaged in the effort to separate her from the federal Union by force of arms," was competent to act as an officer of election in November, 1868, and if not competent, whether his incompetency vitiates the election; and—

2. Whether an election is valid under the first act named, if the officers thereof were not equally divided between the two political parties in a precinct where there were a sufficient number of persons belonging to each party to fill said offices.

In the opinion of your committee, the act of 1862 was designed to prevent the recognition of the secession party, then organized in Kentucky, as one of the political parties from which to select officers of election. It provides that "those who engaged in the rebellion," &c., "shall not be deemed *one of the political parties* in this Commonwealth, within the provisions of the act to which this is an amendment."

It is a well-known fact in the history of the country that in 1862 there existed in Kentucky three parties, viz: the Union party, which was in favor of raising men and money in that State for the suppression of the rebellion; the democratic party, which was opposed to taking any part in the struggle, and in favor of neutrality; and the secession party, which favored the rebellion and urged the separation of Kentucky from the Union by force of arms. The purpose of the act of 1862 was to prevent the selection of election officers from the ranks of this third party, and confine the selection to the two former. It is insisted that the true construction of this act would render all persons who aided in the rebellion permanently ineligible to act as officers of election, regardless of their political sentiments at the time of so acting, but the language will not bear this construction. A *political party* then in existence in Kentucky is described, and it is declared that *this party* "shall not be deemed one of the political parties" from which to select officers of election. When this party ceased to exist, and the persons who belonged to it became merged in other political organizations, the act became obsolete. It operated upon a party or political organization and not upon individuals. If the intention had been to render all the persons who, in 1862, belonged to the secession party permanently ineligible, how easy it would have been to have so declared in plain terms. If such had been the intent, the language would have been something like this: "No person who has engaged in the rebellion for the overthrow of the government, or given aid and comfort thereto, shall hereafter be appointed as an officer of any election in this Commonwealth." Again, the act of 1862 must be considered as a part of that of 1858. The latter was enacted to give a construction to the former. The two must be considered together. Now the act of 1858 was designed to secure to each of the two parties then existing in Kentucky a fair representation on election boards. Subsequently a third party, to wit, the secession party, was organized. Here, then, were *three* parties, and it was evidently found that the third party would claim to be entitled to a portion of the election officers under the act of 1858. The act of 1862 declared in effect that no such claim should be allowed; that the division of officers of election should continue to be made just as if no third party had been organized, or, in other words, that the secession party should not be regarded as a political party in selecting officers under the act of 1858.

It is well to observe here, however, that even if it were granted that the two statutes cited should be constructed as forbidding the appointment of persons who engaged in or aided the rebellion, the question would still remain, Did the fact of the appointment of such persons, in



the absence of all fraud, render the elections where they acted absolutely void? It will be hereafter seen that if they were *de facto* officers, acting under color of authority, and not mere usurpers, then their acts are not (in the absence of fraud) void as to third parties.

These judges of election, under the law of Kentucky, are appointed by the county courts in the several counties. They are to consist of two justices of the peace, if so many there be, or of one justice of the peace and one other suitable person. In case of a disagreement between the judges, the sheriff acts as umpire. It seems clear to the committee that even if the acts above named were construed as claimed by contestant, it could only follow that the county courts in Kentucky had failed in some instances to do their duty in selecting election officers, and had thus subjected themselves to the penalty provided by those statutes, to wit, "a fine of \$100 for each omission," and not that all votes cast at the elections held by such officers should be thrown away. An officer appointed by competent authority, having all the other qualifications requisite, save only that of loyalty during the rebellion, (where that is required,) would certainly be an officer *de facto*, clothed with color of authority, at least.

We inquire, in the next place, what was the effect of a failure to divide election officers equally between the two political parties. We are altogether unable, consistently with our views of the law, to hold that such failure *of itself* avoids the election. What we have said, and what we shall hereafter say, about the validity of the official acts of officers *de facto* applies here, for such officers are clearly of that class. Besides, the statute which we have quoted, requiring an equal division of election officers between the two political parties, itself provides the penalty which shall be incurred by the persons appointing these officers, if the statute is disregarded. It declares that the penalty shall be a fine of \$100 for each offense of the kind. It does not declare that the election shall be set aside in such cases. It will be seen hereafter that this point is not material to the case of contestant, inasmuch as by throwing out all the polls where the election officers were not equally divided politically he would lose more than he would gain.

#### ELECTION OFFICERS NOT SWORN.

The act of Congress regulating proceedings in cases of contested elections, and under which this proceeding was instituted, provides as follows:

Whenever any person shall intend to contest the election of any member of the House of Representatives of the United States, he shall, within thirty days after the result of said election shall have been determined by the officers or board of canvassers, give notice in writing, to the member whose seat he designs to contest, of his intention to contest the same, and such notice shall specify particularly the grounds upon which he relies in the contest. (See Brightley's Digest, vol. 1, page 254, sec. 14.)

As in this case there is nothing in the notice of contest in relation to the failure of election officers to take the oath prescribed by law, contestee objects to all the evidence upon that subject, and did so object, as the record shows, when the same was taken. The committee are of the opinion that the objection is well taken. The language of the statute is specific, and admits of but one construction. The grounds of the contest which are to be insisted upon *must* be stated in the notice. This, of course, is to the end that the contestee may be fully advised of the nature of the case which he has to meet. The notice is the only pleading required of contestant; it is the foundation upon which the whole proceeding rests, and if the contestant could introduce one new cause of contest not



mentioned therein he could introduce any number, and the contestee could never know in advance of the taking of the testimony what issues are to be tried. When we add to this the consideration that the time for taking testimony in these cases is, as compared with ordinary litigation of equal importance in the courts of the country, necessarily brief, and that if a contestant may go outside of his notice at all he may do so just before the time for taking testimony expires, and thus cut off his adversary from the privilege of taking rebutting testimony, the great importance of adhering to the law will be apparent to all.

If the House agree with the committee as to the conclusiveness of this point, it will not be necessary to consider the further question, whether an election fairly conducted and in no manner tainted by fraud should be held void because the officers thereof were not duly sworn. There is, however, a principle of law which your committee believe to be well settled by judicial decisions, and most salutary in its operations, which is conclusive of this point, as well as of several other points in this case. It is this: That in order to give validity to the official acts of an officer of election so far as they affect third parties or the public, and in the absence of fraud, it is only necessary that such officer shall have *color* of authority. It is sufficient if he be an officer *de facto* and not a mere usurper. This doctrine has been recognized and enforced by many of the highest courts of this country, and among others by the following: By the court of appeals of New York, in the case of *The People vs. Cook*, (4 Selden, 67.) In this case the court say:

The neglect of the officers of the election to take any oath would not have vitiated the election. It might have subjected those officers to an indictment if the neglect was willful. The acts of public officers being in by color of an election or appointment are valid so far as the public is concerned.

Again:

An officer *de facto* is one who comes into office by color of a legal appointment or election. His acts in that capacity are as valid, so far as the public is concerned, as the acts of an officer *de jure*. His acts in that capacity cannot be inquired into collaterally.

By the supreme court of Minnesota, in the recent case of *Taylor vs. Taylor et al.*, (10 Minnesota, 107:) One ground of contest in this case was that "in certain towns at said election the judges and clerks of said election did not take the prescribed oath or any oath." The court say:

If the votes of the citizens are freely and fairly deposited at the time and place designated by law, the intent and design of the election are accomplished. It is the will of the electors thus expressed that gives the right to the office, and the failure of the officers to perform a mere ministerial duty in relation to the election cannot invalidate it if the electors had actual notice and there was no fraud, mistake, or surprise.

Again the court say:

If the officers of election fail to perform their duty the law provides a penalty; but the election is not necessarily rendered void.

By the supreme court of Pennsylvania, in the case of *Baird vs. Bank of Washington*, (11 S. & R., 414.) We quote a sentence from the opinion in this case:

The principle of colorable election holds not only in regard to the right of electing but of being elected. A person *indisputably ineligible* may be an officer *de facto* by color of election.

By the supreme court of Illinois, in *Pritchett et al. vs. The People*, (1 Gilm., 529.) In the course of the opinion the court say:

It is a general principle of the law that ministerial acts of an officer *de facto* are valid and effectual when they concern the public and the rights of third persons, although it may appear that he has no legal or constitutional right to the office. The interests of the community imperatively require the adoption of such a rule.



The same court, in *The People vs. Ammons*, (5 Gilm., 107,) hold the same doctrine, and state it in this language:

The proof offered would have shown that he was an officer *de facto*, and as such his acts were as binding and valid when the interests of third persons or the public were concerned as if he had been an officer *de jure*.

By the supreme court of Missouri, in *St. Louis County Court vs. Sparks*, (10 Mo., 121,) where the court say:

When the appointing power has made an appointment, and a person is appointed who has not the qualifications required by law, the appointment is not therefore void. The person appointed is *de facto* an officer; his acts in the discharge of his duties are valid and binding. \* \* \* A statute prescribing qualification to an office is merely directory, and although an appointee does not possess the requisite qualifications his appointment is not therefore void unless it is so expressly enacted.

By the supreme court of California, in the case of *Whipley vs. McKune*, (10 Cal., 352.) In this case the election of McKune to the office of district judge was contested upon the ground that "the officers conducting the election in a given district were not sworn as the election laws require." No fraud being shown the election was held valid, notwithstanding such failure of the officers to be sworn.

By the supreme court of New York, in an elaborate opinion in the case of *The People vs. Cook*, (14 Barbour, 259,) from which we quote a few sentences:

It becomes important in this case to determine whether the objections which are taken to the inspectors of elections in the several cases presented in the bill of exceptions, are of that character which should be held to invalidate the canvass in these several localities. These objections are of a two-fold character, extending to the *regularity or legality of their appointment and to their omission to qualify by taking the proper oath of office.* \* \* \* It is sufficient that they were inspectors *de facto*. They came into office by color of title, and that is sufficient to constitute them officers *de facto*. The rule is well settled by a long series of adjudications both in England and this country, that acts done by those who are officers *de facto* are good and valid as regards the public and third persons who have an interest in their acts, and the rule has been applied to acts judicial as well as to those ministerial in their character. This doctrine has been held and applied to almost every conceivable case. It cannot be profitable to enter into any extended discussion of the cases. The principle has become elementary, and the cases are almost endless in which the rule has been applied.

So, in the case of *Greenleaf vs. Low*, (4 Denio, 168,) it was held that a person elected to the office of justice of the peace, who neglected to take the oath of office and to give the security required by law, is nevertheless in office by color of title, and his acts are valid as regards the public and third persons. The court say:

Sufficient facts appeared to show that Jones was a justice of the peace *de facto* at the time he rendered the judgment in question. He came into his office by color of title. It is a well-settled principle that acts done by such an officer are as valid, so far as the public or the rights of third persons are concerned, as if he had been an officer *de jure*, and that the title of the officer cannot be collaterally inquired into.

Exactly the same point was decided in the same way in the case of *Weeks vs. Ellis*, (2 Barbour, 324,) where a justice of the peace had entered upon the duties of his office without taking the oath prescribed by law.

And so, likewise, in the case of *Keyser vs. McKisson*, (2 Rawle, 139,) it was held that the failure of county commissioners to take the oath prescribed by the constitution of Pennsylvania did not invalidate their acts as such where the public or third persons were concerned.

So, in the case of *McGregor vs. Balch*, (14 Vermont, 428,) it was held that, although a person could not legally hold the office of justice of the peace at all while holding the office of assistant postmaster under the United States, yet, having entered the former office under the forms of law, he was a justice of the peace *de facto*, and his acts as such were valid as to third persons and the public.



A long list of cases in the courts of the country might be added, but the committee deems these sufficient. After a careful examination of the authorities, the committee is satisfied that no principle of law is better settled by judicial decisions, and that no authority can be found emanating from a respectable court in conflict with those cited. The cases which have been decided by this House are not so harmonious or so free from difficulty. These will now be referred to briefly:

The case of *Jackson vs. Wayne*, (Cl. and H., 47 :) In this case it was held that where the law required three magistrates to preside at an election, a return by three persons, two of whom were not magistrates, was defective. An examination of the whole case, however, shows that fraud was charged and proven, and the case is therefore not authority for the doctrine that a fair election at which the people have expressed their voice fully and freely should be set aside on the ground that one or more of the officers were such *de facto* only and not *de jure*.

*McFarland vs. Culpepper*, (Cl. and H., 221 :) In this case it seems to have been held, without much consideration or discussion, that a failure on the part of election officers to take the required oath vitiates the election. It is not quite clear that the case was one in which there was no fraud. Much of the evidence was ruled out because not properly taken, and finally the seat which was contested was declared vacant.

*Easton vs. Scott*, (Cl. and H., 272 :) In this case the failure of some of the election officers to be sworn is one of the many objections urged against the validity of the election. Upon the whole case the seat was declared vacant. This case, however, was not decided upon the sole ground that the officers were not sworn. There were other objections, and among them, that the election was held *viva voce* when the law required that it be by ballot, and that there was fraudulent voting and fraudulent rejection of legal votes.

*Draper vs. Johnston*, (Cl. and H., 702 :) In this case the vote of a precinct presided over by officers not sworn was thrown out. The point does not seem to have been discussed or the soundness of the law laid down to have been questioned.

*Howard vs. Cooper*, (Bartlett, p. 275 :) This case was decided upon various grounds. There were illegal votes and frauds alleged and proved to the satisfaction of the committee. Among other things it was shown that at one precinct there were but two inspectors, whereas the law required three. This was held to vitiate the vote of the precinct where such officers presided. At this same precinct, however, the committee found that illegal votes were cast.

In the case of *Delano vs. Morgan*, (fortieth Congress,) the vote of one township was thrown out, upon the ground that one of the three judges of election was a deserter from the Union army, and therefore not capable of taking or holding the office. In the discussion of that case the chairman of the committee (Mr. Dawes, of Massachusetts) put the decision upon the ground that there was an express statute declaring that a person guilty of desertion should "be *incapable and forever disqualified* to hold any office under the government." He insisted that such a person could not be an officer even *de facto*, (*vide* Congressional Globe, vol. 67, p. 26808.) It is worthy of remark that while some of the decisions of this House seem in conflict with the doctrine of this report, that doctrine itself has never been directly questioned. It may have been ignored, but no report can be found in which it has been denied in express terms, or even seriously doubted. On the contrary, wherever this principle is referred to at all in any of the reports in cases decided by this House, it has been approved.



There are a number of decisions of this House quite in harmony with the law as it is laid down by the courts, as shown by the judicial decisions hereinbefore quoted. We notice the following:

Mullikin *vs.* Fuller, (Bartlett, p. 176.) In this case the election at a certain precinct was held by officers who were not chosen according to law, having been elected in April, when by law they should have been elected in March. The report of the committee, which was unanimous, and which was adopted by the House, contains this language:

The committee is unanimously of the opinion that the persons officiating were officers *de facto*, acting in good faith, and *as no fraud is alleged*, the votes from the district were rightfully counted for the sitting member.

In Clark *vs.* Hall, (Bartlett, 215,) the report of the committee has this language:

Your committee would not reject for mere informality a county abstract which truly presents the aggregates of the votes actually cast in the precincts.

In the case of Flanders and Hahn, (Bartlett, 443,) the committee used this language:

The principal and only aim of the law is to secure fair elections, and the non-observance of directory provisions cannot annul an election carried on with all the essentials of an election and with perfect fairness.

And finally, in the case of Blair *vs.* Barrett, (Bartlett, page 313,) after a careful review of the whole subject, the committee, through its chairman, Mr. Dawes, of Massachusetts, states the law precisely in accordance with the view now taken by your committee. We extract as follows:

Had it appeared from the evidence that the election had been fairly conducted at these precincts, and there were no traces of fraud, no taint of the ballot-box, the committee would not have been willing to have recommended a rejection of these polls. The honest electors should not be disfranchised and their voice stifled from a mere omission of the officers of election to take the oath of office.

The question, therefore, regarded in the light of precedent or authority alone, would stand about as follows: The judicial decisions are all to the effect that the acts of officers *de facto*, so far as they affect third parties or the public, in the absence of fraud, are as valid as those of an officer *de jure*. The decisions of this House are to some extent conflicting; the point has seldom been presented upon its own merits, separated from questions of fraud; and in the few cases where this seems to have been the case the rulings are not harmonious. In one of the most recent and important cases, (Blair *vs.* Barrett,) in which there was an exceedingly able report, the doctrine of the courts, as above stated, is recognized and indorsed. The question is therefore a settled question in the courts of the country, and is, so far as this House is concerned, to say the least, an open one.

Your committee feels constrained to adhere to the law as it exists and is administered in all the courts of the country, not only because of the very great authority by which it is supported, but for the further reason, as stated in the outset, that we believe the rule to be most wise and salutary. The officers of election are chosen of necessity from among all classes of the people; they are numbered in every State by thousands; they are often men unaccustomed to the formalities of legal proceedings. Omissions and mistakes in the discharge of their ministerial duties are almost inevitable. If this House shall establish the doctrine that an election is void because an officer thereof is not in all respects duly qualified, or because the same is not conducted strictly according to law, notwithstanding it may have been a fair and free election, the result will be very many contests, and, what is worse, injustice will be done in many



cases. It will enable those who are so disposed to seize upon mere technicality in order to defeat the will of the majority.

It will be seen that if the conclusions which the committee have reached upon the law of the case be sustained by the House, the only questions of fact to be considered are the following :

1. What precincts, if any, should be rejected and thrown out on account of fraud or intimidation, or for any cause.

2. What votes should be rejected, as having been cast by persons not entitled to vote, for any cause.

#### GAINES PRECINCT, PULASKI COUNTY.

In this precinct the proof shows that there was some excitement preceding the election occasioned by the posting up of notices threatening prominent republicans with lynching, and by the further fact that several persons had been lynched, and one or two murdered in the vicinity a short time previously. It seems, however, that the only result of this excitement was the arming of men on both sides, so that when the day of election came both parties appeared at the polls armed. No violence occurred at the polls, it having been agreed on both sides that there should be peace for the day. There was a full vote, and no one was prevented from voting according to his desire. Some two or three persons are spoken of in the testimony as having voted for Adams who desired to vote for Barnes, but the reason given is that they were indebted to certain persons who were friends of Adams, and whom they did not wish to offend. It is not to be doubted that an effort was made to intimidate the republican voters at this precinct by posting up threatening notices and otherwise ; but it is also clear that it was wholly unsuccessful. The republicans went to the polls determined to maintain their rights, and they were not molested. The vote of this precinct cannot be rejected.

#### GLADES PRECINCT, PULASKI COUNTY.

In this precinct there was no disturbance at the polls. There is, however, no doubt but that at and for some time prior to the election there was a general feeling of dread and alarm among republicans, occasioned by outrages committed and threats made by a secret organization called the Ku-Klux Klan. In June, previous to the election, one James W. Baker was murdered, and three others were taken from their homes at night and whipped. In the adjoining county of Lincoln, but within five miles of this precinct, an old man between seventy and eighty years of age was taken from his home at night and severely whipped. All this was done by men in disguise. Notices to leave the country had been given to various active republicans. Thomas Wallen, a republican, testifies that he voted for Adams through fear. Many republicans hid themselves away from their homes at night. Five persons who would have voted for Barnes left the precinct just before the election, saying they considered their lives unsafe. Notwithstanding all this, there was quite a full vote polled, and there was no attempt at the polls to compel persons to vote contrary to their wishes. As, however, the poll-book for this precinct is not certified by any officer of election, and for that cause must be thrown out, we find it unnecessary to decide as to the effect of the intimidation proved upon the vote of the precinct.

#### MOUNT VERNON PRECINCT.

At this precinct S. L. Newcum, one of the judges, at about 3 o'clock  
H. Mis. Doc. 152—49



p. m. of the day of the election, left his post and refused longer to act, declaring that he feared a disturbance. J. C. Jones was appointed by the sheriff to fill the vacancy occasioned by Newcum's withdrawal, and acted from that time until the close of the polls. There was no serious interruption, and there can be no pretense that the vote of this precinct can be thrown out for violence or intimidation. It is claimed, however, that a number of railroad hands voted at this precinct for contestee who were not residents, within the legal signification of that term, and that their votes were therefore illegal. The testimony is not at all clear as to the number of the persons of this class whose votes it is claimed should be rejected. They are spoken of rather as a class than as individuals. That there were illegal votes cast by some of these persons we think is beyond question, but the presumption is always in favor of the legality of a vote which has been admitted by the proper officers; and, since all elections in Kentucky are *viva voce*, and since the record shows how each person votes, it would not, we think, be too much to require contestant to prove the want of residence of such persons as he claims illegally voted for contestee. As to the number of persons who are proved to have voted for contestee and not to have had a legal residence in the district, we shall speak in another place. It is sufficient for the present to say that we do not find any sufficient reason for throwing out the entire vote of the precinct. It is well to observe here that a majority of the officers of election at this precinct were the political friends of contestant, and voted for him, and it is not probable that they knowingly and fraudulently admitted any illegal votes to be cast against him.

#### RICHMOND PRECINCT.

The election at this precinct was not disorderly. A number of "rail-road hands" voted, and, it is alleged, illegally. They were not in many cases required to produce their naturalization papers. P. P. Bullard testifies (page 142) that he thinks there were twenty or twenty-five foreigners voted without producing their naturalization papers. The vote at this precinct should undoubtedly be purged of a number of illegal votes, but the evidence is not sufficient to authorize the rejection of the entire poll, especially in view of the fact that it was within the power of contestant to show the facts in relation to each person who voted for contestee, and thus purge the poll of all illegal votes. The rule is well settled that the whole vote of a precinct should not be thrown out on account of illegal votes having been cast, if it be practicable to ascertain the number of illegal votes, and the person for whom cast, in order to reject them and leave the legal votes to be counted. Legal votes are not to be thrown out in order to get rid of illegal votes, unless necessity requires it as the only means of preventing the consummation of a fraud upon the ballot-box.

#### ILLEGAL VOTES.

The evidence shows that by throwing out the votes of deserters from the federal army, and those of minors and non-residents (other than the railroad vote) nothing would be gained for contestant. We therefore pass by these and come to—

#### THE VOTES OF RAILROAD LABORERS.

No person is a legal voter under the constitution of Kentucky unless



he be a resident of the State, county, and voting precinct. A temporary sojourner is not a resident within the legal sense of that term. A person who goes to a place for a specified purpose, and with the intention of leaving it when that purpose is accomplished, does not gain a residence, however long he may remain. It follows that such persons as went into any of the precincts in question for the purpose of working on the railroad, and with the intention of leaving when the road should be completed, had no right to vote. The testimony is not as clear as it might be as to the number of votes which ought to be thrown out under this ruling. The committee are of the opinion that the following rule should govern in determining what votes to reject: Whenever it appears that a person came into the precinct for the purpose of working on the railroad, that he resided in a temporary habitation, and was generally regarded as a temporary inhabitant, and that he actually left very soon after the road was completed, and soon after the election, his vote should be rejected.

If it were necessary to go into a very careful examination of the testimony to determine with accuracy how many of these votes should be thrown out, many nice and doubtful questions of fact would arise, and the committee might not be able to agree, but it is quite certain that the most that contestant could gain in the most favorable view of the case for him would be 190 votes, as follows:

	Votes.
Mount Vernon precinct .....	80
Round Stone precinct .....	30
Richmond precinct .....	20
Kemper's precinct .....	29
Kirkville precinct .....	24
London precinct .....	7
Total .....	190

#### PRECINCTS THROWN OUT.

We have already said that the Glades precinct, No. 11, in Pulaski County, must be rejected, because it is not certified to be correct by any officer. This objection is substantial and not technical. The paper purporting to be a poll-book for this precinct proves nothing whatever. To admit such a paper as evidence would be to set aside all rules and open wide the door for fraud. The reported majority for contestee at this poll was 112. The operation of this rule, however, must exclude the poll-books of the following precincts at which contestant received majorities, to wit:

	Votes.
McHargue's, Laurel County, majority for Barnes .....	115
Rock House, Laurel County, majority for Barnes: .....	14
Precinct No. 6, Josh Bell County, majority for Barnes .....	31
Slater's Fork, Harlan County, majority for Barnes .....	12
Total .....	172

In these four precincts the poll-books are not certified in any manner whatever. There are other precincts at which contestant received majorities where the poll-books are certified very informally, but it is not neces-



sary to decide whether the certificates are sufficient or not in these cases. The result of our conclusions is as follows:

Reported majority for Adams .....	462
Adams's gain in precincts where poll-books are not certified .....	172
	<hr/>
	634
Railroad vote thrown out .....	190
Adams's majority in Glades precinct thrown out .....	112
	<hr/>
	302
	<hr/>
Leaving majority for Adams .....	332
	<hr/>

We have passed over without notice several allegations of contestee, because it does not seem necessary to pass upon them.

The committee further report that they believe the contest in this case was instituted and has been carried on by the contestant with perfect good faith and with reasonable cause, and that he has given much time and labor and incurred large expense in its prosecution, for which he is entitled, under the precedents heretofore established by the House, to be compensated. Your committee therefore submit the accompanying resolutions and recommend their passage:

*Resolved*, That George M. Adams was duly elected as representative in the forty-first Congress from the eighth district of Kentucky, and he is entitled to retain his seat as such.

*Resolved*, That Sidney M. Barnes, having contested the seat of Hon. George M. Adams, as a representative in this House from the eighth district of Kentucky, in good faith and with probable cause, there shall be paid to him out of the contingent fund of the House of Representatives the sum of ——— dollars, in full for his expenses in such contest.

### GEORGE TUCKER vs. GEO. W. BOOKER.

The whole subject was laid on the table, (July 5,) 99 to 24.

March 22, 1870.—Mr. George M. Brooks, from the Special Committee of Elections, made the following report:

*The Sub-committee of Elections, to which was referred the credentials of George W. Booker, claiming to be a representative in the present Congress from the fourth congressional district in the State of Virginia, and the memorial of George Tucker, claiming to have been elected as such representative, submits the following report:*

The memorial, notice, and allegations of George Tucker, the contestant, the evidence, and other papers in the case may be found in miscellaneous document No. 44, of the present session, from which it appears that George W. Booker was duly elected as a representative to the forty-first Congress on the sixth day of July, 1869. The record of the vote is as follows:

George W. Booker .....	13, 101
George Tucker .....	9, 568
W. H. Stowell .....	4, 639



The returns, therefore, show that the said Booker was elected by a plurality of 3,533 over the said Tucker.

But the right of the said Booker to hold a seat in the forty-first Congress is contested by the said Tucker on the ground that he is ineligible, totally disabled, incompetent, and prohibited from holding his seat as such member under the provisions of the third section of the fourteenth amendment to the Constitution of the United States, which is as follows:

SEC. 3. *No person shall be a senator or representative in Congress, or elector of President or Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof; but Congress may, by a vote of two-thirds of each House, remove such disability.*

And that he is unable to take the oath required by the act approved July 2, 1862, entitled "An act to prescribe an oath of office, and for other purposes," which is in the following words:

I, A. B., do solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted nor attempted to exercise the functions of any office whatever, under any authority or pretended authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter: So help me God.

By reason of disloyal acts alleged to have been committed by the said Booker, as specifically set forth in the "allegation of ineligibility," made by said Tucker, on page 3 of Mis. Doc. No. 44.

From the evidence it appears that on July 14, 1856, said Booker, having been elected a justice of the peace for the county of Henry and State of Virginia, for the term of four years from the 1st day of August then next, took the oaths of office prescribed by law, and the oath to support the Constitution of the United States; that acting under this commission, he performed the duties of justice of the peace, and on July 9, 1860, having been again elected a justice of the peace for the term of four years from the first day of August then next, he took the several oaths required by law, and on the 10th day of September, 1860, he was elected presiding justice of the court, and that he continued to exercise the duties of such magistrate during the rebellion.

The particular acts of disloyalty that are relied upon by the contestant, and which appear to be proved and are not denied by the contestee, are as follows: That at a county court held for Henry County, at the court-house, on May 13, 1861, said Booker met with other justices and voted to accept the provisions of an act of the general assembly, passed January 19, 1861, authorizing the county courts to arm the militia of their respective counties, and to provide means therefor, pursuant to a resolution of the convention of Virginia "recommending the county courts to levy or raise, by issuing bonds, a sufficient amount of money to equip and arm such volunteers as may be raised within the limits of their respective counties;" it was also at said court "ordered that ten thousand dollars be raised by levy on all the lands and all other subjects liable to tax and levies in said county."

That at a county court held July 8, 1861, said Booker being present as presiding justice, William Martin was appointed by said court as an



agent on the part of Henry County, "to visit the volunteer companies in the service, and report to the next court the wants and general condition of said companies, with a view to making provision by the court for the relief of their necessities." At a court held September 9, 1861, Samuel H. Haviston was appointed an agent for the county to purchase full winter equipments for the four volunteer companies in the service.

At a court held October 15, 1861, said Booker was appointed an agent for the county "to repair to the encampments of the several companies from said county and ascertain the wants of each member in clothing, and report thereof to the next court." And at a court held November 12, 1861, said Booker made a report in writing, which is annexed hereto and marked A.

At a court held May 12, 1862, it was ordered "that the families of the militia in the service of the State or Confederate States be provided for by the commissioner in the same manner as the families of the volunteers."

At a court held January 12, 1863, it was ordered "that bonds to the amount of three thousand dollars be disposed of, and the proceeds paid over to said Booker;" and said Booker was then appointed an agent "to repair to the army, ascertain the individual necessities of the soldiers from Henry County, and to purchase such articles for the soldiers as they may need."

At a court held February 9, 1863, said Booker made his report as agent appointed by the last court, and thereupon certain persons were appointed to solicit contributions in the way of clothing, &c., for the soldiers, and were ordered to deposit the same with the clerk of the court, and B. F. Dyer was appointed to take charge of such articles as might be so collected, and carry them to the soldiers and buy such articles as should be lacking after the distribution; and to furnish said Dyer with funds for such purpose said Booker was directed to pay over to him the balance in his hands of the five hundred dollars received from J. Griggs, and said Griggs was ordered to sell the bonds authorized by the order of the last term of this court, and pay the proceeds to said Dyer.

At a court held August 10, 1863, said Booker, who had been appointed at the then last term of court to contract with the proper authorities for furnishing salt to the citizens or counties of the State, made his report, which was adopted by the court, and it was ordered "that said Booker proceed to hire two able-bodied negro men, as mentioned in said report, and proceed to consummate the contract; and it is ordered that the salt agent pay to said Booker \$447 for his expenses out of the sale of the salt." Said Booker was present and acted at all the above sessions of the court.

That on May 26, 1864, said Booker was duly elected a justice of the peace for the Ridgeway district, in the county of Henry, and August 3, 1864, he took the several oaths of office as required by law.

It appears from the testimony of Jeremiah Griggs, a witness for the contestant, that said Booker voted for the ordinance of secession.

Q. Do you know whether Mr. George W. Booker voted for the ordinance of secession or not?—A. Mr. George W. Booker stated to me that, although he was opposed to the ordinance of secession, on consultation with a certain Mr. Gravely, who agreed with him in sentiment on that subject, he concluded it would be more safe to vote for it, and did so vote.

The contestee does not deny any of the above facts, but he claims that he was, from the outset opposed to the doctrine of secession; that he was always a Union man; that he held the office of justice of the peace



at the beginning of the war, and it was deemed best by those opposed to secession that as many Union men as possible should hold these offices for the purpose of protecting Union men, and that the position he held was a protection to him against conscription in the rebel army.

It appears in evidence that said Booker was conscripted, and was released therefrom on a habeas corpus, on the ground of his holding the office of justice of the peace.

From the testimony of the witnesses, (who are men of apparent respectability and standing, most of them having held offices of trust and honor in Virginia, and who were well acquainted with said Booker,) the committee is of the opinion that said Booker was a loyal man and had no sympathy with the rebellion, and that all the acts done by him that were charged to be disloyal (except his vote on the ordinance of secession) were so done in the line of his duty as a member of the court, and in the legitimate discharge of such duties; that the state of public opinion was such in the locality where said Booker lived that to have resigned or to have refused to perform the duties of his office, to have voted against, or not to have voted at all, upon the ordinance of secession, or to have done any act indicating that he was opposed to secession, or was a sympathizer with the United States, would have subjected him to personal violence; that his continuance in and acts done in his office were so done for the purpose of protecting his person, family, and property from violence, and himself from conscription, and for the reason that by holding the office he could be of some aid and benefit to Union men.

Although technically said Booker may have seemed to have "given aid and comfort to the enemies" of the United States by performing the duties of his office, yet the committee is convinced that he was during the whole rebellion, and to the present time has been, a sincere Union man, and that the acts by him performed to which objection is taken are in contravention of the letter but not the spirit of the third article of the fourteenth amendment to the Constitution of the United States. The committee therefore holds that said Booker is not ineligible under the same.

The committee is, however, of the opinion that if no action had been taken by the House upon the claim of said Booker for a seat, it would have reported that having accepted and exercised the functions of an office under the confederate government, he could not take so much of the oath prescribed by the act of July 2, 1862, as declares that he has "neither sought nor accepted, nor attempted to exercise the functions of any office whatever, under any authority or pretended authority in hostility to the United States," without being relieved from the disabilities imposed by said act, and that it should have recommended that so much of said oath above recited should be omitted in administering the oath of office to said Booker.

But the House, on the 1st day of February last, upon representation being made that said Booker was loyal, voted that he was entitled to his seat, and he took the oath prescribed by the act of July 2, 1862, and is now a sitting member of this House. The committee is of the opinion that this vote was an indication of the sense of the House that the fact of his loyalty was the question to be settled, and this being determined in his favor, he was entitled to his seat. The committee also believes that said Booker, conscious of his loyalty, did not consider that he was debarred from taking said oath, holding the office under the circumstances and for the purposes he did so hold it; that he did not deem it was the spirit, intent, or meaning of the same to apply to one who was



truly loyal and a Union man through the rebellion, and has been so to the present time.

The committee therefore believing said Booker to have taken said oath honestly, considering that he was right in so doing, and being desirous of carrying out the will of a large plurality of the voters in his district, and the declared wish of the House as expressed by their vote of February 1, hereby recommends the passage of the following resolution:

*Resolved*, That the Hon. George W. Booker is entitled to retain his seat as a member of this Congress from the fourth district of the State of Virginia.

---

A.

No. 5.—*Copy of report by Mr. Booker to the court.*

*To the county court of Henry:*

The undersigned, a commissioner appointed by an order made at the October term, 1861, "whose duty it shall be to repair to the encampment of the companies from this county in the confederate army, now in Northwestern Virginia, and ascertain the wants of each member in clothing, and report thereof to the next court; he shall also ascertain and report what members of each company will accept the clothing furnished by the government, and what will not; and shall explain to the companies the difficulty of raising money by the court, and of procuring proper material for the purpose," begs leave to report that, in obedience to said order, he left home on the 20th of October, and arrived at the encampment of the forty-second regiment on Saturday, the 26th, calling at the White Sulphur Springs and Lewisburg to see some of the volunteers from this county, who were at those places in the hospital sick. That as soon as convenient after his arrival at the encampment, he had the different companies called together and addressed them at length, reading the aforesaid order, and requesting each member to furnish the captain of his company with a statement of the articles he needed, and urging upon them the necessity of drawing clothing from the government, if possible. It gives me great pleasure to say that every member seemed perfectly willing to do so, and I was furthermore informed that a requisition had been made through the quartermaster, Major Saunders, upon the government, and that nothing had been heard from it. I deemed it proper to return by way of Richmond and call upon the department, and ascertain what articles and the amount had been sent. I ascertained that a considerable number of articles of clothing, &c., had been sent to Major Cosby, quartermaster to the army of the northwest, embracing the whole command of Major General Robert E. Lee, (a copy of which is herewith presented, taken from the books of the quartermaster's department.) From information there obtained and from other sources, I am of opinion that it is useless to expect the government to furnish the volunteers from our county more than has already been done, and that they will have to depend upon their own resources and the assistance of the court for their winter supplies of clothing and blankets, as the government cannot possibly fill up the requisitions that have been made upon it by the time winter sets in.

It will appear by reference to the statements made by the several captains already referred to, that most of the volunteers who have the means, prefer to furnish their own clothing rather than to have it furnished by the county. And in view of the present high prices of yarn-cloth, and the difficulty of obtaining blankets, &c., in time to meet the necessities of the volunteers, it is proper perhaps for me to add, that it is totally immaterial whether or not their winter clothing be in uniform. Hence many men can obtain clothing from home already made; and as the army, in all probability, will be in winter quarters before this supply can be sent, bed-quits will answer very well in the place of blankets, where blankets cannot be easily obtained. In view, then, of the lateness of the season, the delay consequent in the county's negotiating a loan of money, the high price of cloth, and the time which would necessarily elapse before full suits can be made up and sent to camp, I would most respectfully recommend to the families and friends of the volunteers to provide as speedily as possible as much clothing as they can by their individual means, and report as soon as they can to the commissioners who may be appointed by the court to attend to this matter; and I recommend to the court to provide the means of transportation to the encampment. And I would also recommend that the clothing be sent by wagon instead of by railroad, as there are



many delays on the railroad, and the means of transportation from the nearest depot to Greenbrier Bridge, in Pocahontas County, where the forty-second regiment will probably take up winter quarters, is so limited at present that they can hardly get a sufficient quantity of flour to the army. Owing to the severity of the winter in that region, (snow falling from two to three feet in depth sometimes, as I am informed,) I think it highly necessary that each man should have at least, in addition to ordinary clothing, two pairs of flannel or linsey shirts and drawers, one pair of good winter boots, one overcoat and blanket, besides good bed covering, of which quilts will answer as well as blankets.

I regret that my time was so limited that I could not see all the volunteers from the county. They were scattered at the White Sulphur Springs, Lewisburg, Meadow Bluff, Greenbrier Bridge, the Warm Springs, Healing Springs, Rockbridge, Alum, Staunton, and other places. A good deal of sickness prevailed among them, the result of measles, colds from the frequent rains, rheumatism, and camp fever. I am happy to say, however, that the proportion of mortality among our men, when it is considered the number sick, is surprisingly small. And, so far as my observation extended, the wants of our sick were as well attended to as could possibly be expected under the circumstances. Appended will be found a list of the various companies and their wants, and at what place each volunteer is; also my bill of expenses. I cannot close this report without expressing my gratitude to Colonel Burke, and the officers and men of our companies, for the kindness shown me.

All of which is respectfully submitted.

GEO. W. BOOKER.

NOVEMBER 9, 1861.

VIRGINIA, *Henry County, to wit:*

I, Thomas E. Donigan, clerk of the county court of Henry, do certify that the foregoing is a true copy of a paper on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court aforesaid this 6th day of December, 1869, and in the 94th year of the Commonwealth.

[SEAL.]

THOS. E. DONIGAN, *Clerk.*

### SWITZLER vs. DYER.

The secretary of state of Missouri rejected the returns from a county: held that his duties are ministerial and not judicial, and that the act was illegal.

Where the ballot-box is tainted with fraud the return must be rejected; where the election law is violated with evident intent to give opportunity for fraud the return should be rejected.

Non-compliance with the law in a technical matter with no fraudulent intent is not cause for rejecting a return.

The minority report held that the board of registration for a county was illegally changed by intimidation and threats to the fraudulent end that the registration law might be violated; that it was violated, and that the vote of the county should be rejected.

The House refused to sustain the majority report (July 7,) and adopted the minority report—108 to 55.

June 29, 1870.—Mr. Churchill, from the Special Committee of Elections, consisting of Messrs. Churchill, Cessna, and Burr, made the following report:

*The Committee of Elections, to which were referred the papers and evidence in the case of William F. Switzler, claiming the seat now occupied by David P. Dyer, as a representative from the ninth congressional district of Missouri, having considered the same, makes the following report:*

At the election held in the ninth congressional district of Missouri,



on the 3d day of November, 1868, the vote for member of Congress in the several counties composing the district was as follows:

Counties.	D. P. Dyer.	W. F. Switzler.
Monroe .....	169	1,311
Ralls .....	219	199
Andrain .....	305	286
Pike .....	1,035	1,595
Lincoln .....	458	397
Montgomery .....	695	492
Callaway .....	162	343
Boone .....	153	195
Warren .....	829	377
St. Charles .....	1,551	1,091
Total .....	5,576	6,286

From these returns, (Mis. Doc. No. 14, 41st Cong., 2d sess., pp. 58, 59,) the correctness of which is not questioned by either party to this contest, it appears that the contestant, William F. Switzler, received a majority of 710 votes of the votes actually cast in the district for member of Congress at that election. The secretary of state of Missouri, upon affidavits attacking the registration in the county of Monroe, rejected the returns from that county, and a majority of 432 votes being thereby shown for the sitting member, he gave the latter a certificate of election, upon which he was admitted to his seat in the forty-first Congress, pending the contest, notice of which had been served upon him by Mr. Switzler. The duties of the secretary of state, under the laws of Missouri, in respect to certifying the election of members of Congress, are as follows: The judges of election at each voting precinct are required, within two days after the election, to transmit one of the poll-books kept by them (and which is required to contain the names of the voters, of the persons voted for, the office, and the number of votes given to each candidate, duly certified by the judges of election) to the clerk of the county court, who, within eight days thereafter, publicly, in the courthouse, and with the assistance of two magistrates of the county, is required to examine and cast up the votes given to each candidate, and in the case of members of Congress, and of the State legislature and other State officers, within two days thereafter, to send by mail, closely sealed, and not to be opened until the day fixed for the counting of the votes, an abstract of the votes given for those officers to the secretary of state.

Thereupon, "within fifty days after such general election, and as much sooner as the returns shall all have been made, the secretary of state, in the presence of the governor, shall proceed to open the returns and to cast up the votes given for all candidates for any office, and shall give to the person having the highest number of votes for members of Congress from each district certificates of election, under his hand, with the seal of the State affixed thereto." (General Statutes of Missouri, 63, sections 24-32.)

It will be seen from the language of the statutes above quoted, that



the duties of the secretary of state are ministerial only, and not judicial, and they are so held by the supreme court of Missouri—in accordance with the general current of authority, both in this country and in this House—in the case of the State *ex rel.* Charles C. Bland *vs.* Francis Rodman, secretary of state, decided at the January term of that court in 1869, which case arose upon similar action of the same secretary of state, with reference to another officer claiming to have been elected at the same election, in November, 1868, and the doctrine of which is thus stated by the reporter, in his syllabus of the case:

The law relating to elections (Gen. Stat. 1865, ch. 2, sec. 32) does not vest in the secretary of state any discretion in opening and counting returns of votes. It requires him to perform the act. It is the law declared by this court, as well as by the uniform current of authority, that a county clerk, or secretary of state, in opening and casting up votes, acts ministerially and not judicially. The matter of determining upon the legality of votes is a judicial function, to be passed upon before a tribunal competent to make an adjudication when the parties can be heard. (*State vs. Rodman*, 43 Mo., 256.)

The same question was again before the supreme court of Missouri in *State vs. Steers*, 44 Mo., 224-228, in which the county clerk of Ralls County, in this district, rejected the vote of Jasper Township, hereinafter referred to, thereby changing the result in that county in favor of the democratic candidates. In that case the court, after quoting the same statute, says:

Here is no discretion given, no power to pass upon and adjudge whether votes are legal or illegal, but the simple ministerial duty to cast up and award the certificate to the person having the highest number of votes. To allow a ministerial officer arbitrarily to reject returns at his own caprice or pleasure, is to infringe or destroy the rights of others without notice or opportunity to be heard, a thing which the law abhors and prohibits. I have examined with a good deal of research the authorities, and have never been able to find a single one that held otherwise than that the canvasser acted ministerially, but they are unanimous and decisive, declaring him to be a ministerial officer, and nothing else.

Citing, among many other cases, the case of the State *vs.* Rodman, above quoted. These authorities, coming from the supreme court of the State where this case arises, and arising upon the election now in question, seem to settle the case against the propriety of the action of the secretary of state in this case.

It is true that in at least two cases beside the present, (*Butler vs. Lehman*, and *Morton vs. Daily*, Bartlett's Contested Election Cases, 353, 402,) both of which arose in the thirty-seventh Congress, where municipal officers assumed to act judicially, and to reject returns believed by them to be affected by fraud, and thereupon issued certificates to persons who would not have been otherwise entitled to them, such certificates were held sufficient, as in this case, to entitle the holder to the seat, *prima facie*, and pending the contest. But such action being without authority of law, has no weight in deciding the contest upon the merits, when, if necessary, we go back of all certificates, and inquire into the action and right of the individual voter at the polls; and it has been referred to here only as a part of the history of this case, and to explain how the contestant, having a majority of the votes cast, happens to occupy the position he does in this contest. The first and most important question in this case is—

#### SHALL THE VOTE OF MONROE COUNTY BE COUNTED?

The reasons given why it should not be counted are that the superintendent of registration of the senatorial district of which that county is a part, corruptly agreed, as is alleged, with the political friends of the contestant, that he would appoint registering officers in his district who



would register all white male citizens over the age of twenty-one years, without regard to their qualifications, as fixed and prescribed by the constitution and laws of Missouri, on condition, and in consideration, that he should receive the support of the political friends of the contestant for the office of sheriff in the county of Randolph, in which he (the superintendent of registration) resided; and that, in pursuance of this agreement, officers of registration were appointed who would be likely to carry out this agreement; and a large number of persons, disqualified under the law, were permitted to register and to vote in the county of Monroe.

Before proceeding to consider the evidence bearing upon this question, the committee desire to call attention to the provisions of the constitution and laws of Missouri relating to the qualifications and registration of voters in that State.

The following are the third, fourth, fifth, and sixth sections of the second article of the constitution on "right of suffrage:"

SEC. 3. At any election held by the people under this constitution, or in pursuance of any law in this State, or under any ordinance or by-law of any municipal corporation, no person shall be deemed a qualified voter who has ever been in armed hostility to the United States, or to the lawful authorities thereof, or to the government of this State, or has ever given aid, comfort, countenance, or support to persons engaged in any such hostility; or has ever, in any manner, adhered to the enemies, foreign or domestic, of the United States, either by contributing to them, or by unlawfully sending within their lines money, goods, letters, or information; or has ever disloyally held communication with such enemies, or has ever advised or aided any person to enter the service of such enemies; or has ever, by act or word, manifested his adherence to the cause of such enemies, or his desire for their triumph over the arms of the United States, or his sympathy with those engaged in exciting or carrying on rebellion against the United States; or has ever, except under overpowering compulsion, submitted to the authority or been in the service of the so-called "Confederate States of America," or has ever left this State and gone within the lines of the armies of the so-called "Confederate States of America," with the purpose of adhering to said States or armies, or has ever been a member of, or connected with, any order, society, or organization inimical to the government of the United States, or to the government of this State; or has ever been engaged in guerilla warfare against loyal inhabitants of the United States, or in that description of marauding commonly known as "bushwhacking," or has ever, knowingly and willingly, harbored, aided, or countenanced any person so engaged; or has ever come into or has left this State for the purpose of avoiding enrollment for or draft into the military service of the United States; or has ever, with a view to avoid enrollment in the militia of this State, or to escape performance of duty therein, or for any other purpose, enrolled himself, or authorized himself to be enrolled by or before any officer as disloyal or as a southern sympathizer, or in any other terms indicating his disaffection to the government of the United States in its contest with rebellion, or his sympathy with those engaged in such rebellion, or having ever voted at any election by the people in this State, or in any other of the United States, or in any of their Territories, or held office in this State, or in any other of the United States, or in any of their Territories, or under the United States, shall thereafter have sought or received under claim of alienage the protection of any foreign government, through any consul or other officer thereof, in order to secure exemption from military duty in the militia of this State or in the army of the United States; nor shall any such person be capable of holding in this State any office of honor, trust, or profit under its authority, or of being an officer, councilman, director, trustee, or other manager of any corporation, public or private, now existing or hereafter established by its authority, or of acting as a professor or teacher in any educational institution, or in any common or other school, or of holding any real estate or other property in trust for the use of any church, religious society or congregation. But the foregoing provision in relation to acts done against the United States, shall not apply to any person not a citizen thereof, who shall have committed such acts while in the service of some foreign country at war with the United States, and who has since such acts been naturalized, or may hereafter be naturalized under the laws of the United States, and the oath of loyalty hereinafter prescribed, when taken by any such person, shall be considered as taken in such sense.

SEC. 4. The general assembly shall immediately provide, by law, for a complete and uniform registration, by election districts, of the names of qualified voters in this State, *which registration shall be evidence of the qualification of all registered voters to vote at any election thereafter held*; but no person shall be excluded from voting at any election



on account of not being registered, until the general assembly shall have passed an act of registration, and the same shall have been carried into effect; after which no person shall vote unless his name shall have been registered at least ten days before the day of the election; and the fact of such registration shall be no otherwise shown than by the register, or an authentic copy thereof, certified to the judges of election by the registering officer or officers, or other constituted authority. A new registration shall be made within sixty days next preceding the tenth day prior to every biennial general election; and after it shall have been made no person shall establish his right to vote by the fact of his name appearing on any previous register.

SEC. 5. Until such a system of registration shall have been established, every person shall, at the time of offering to vote, and before his vote shall be received, take an oath in the terms prescribed in the next succeeding section. After such a system shall have been established, the said oath shall be taken and subscribed by the voter at each time of his registration. Any person declining to take said oath shall not be allowed to vote or to be registered as a qualified voter. The taking thereof shall not be deemed conclusive evidence of the right of the person to vote, or to be registered as a voter; but such right may, notwithstanding, be disproved. And, after a system of registration shall have been established, all evidence for and against the right of any person as a qualified voter shall be heard and passed upon by the registering officer or officers, and not by the judges of election. The registering officer or officers shall keep a register of the names of persons rejected as voters, and the same shall be certified to the judges of election; and they shall receive the ballot of any such rejected voter offering to vote, marking the same, and certifying the vote thereby given as rejected; but no such vote shall be received unless the party offering it take, at the time, the oath of loyalty hereinafter prescribed.

SEC. 6. The oath to be taken as aforesaid shall be known as the oath of loyalty, and shall be in the following terms:

I, A. B., do solemnly swear that I am well acquainted with the terms of the third section of the second article of the constitution of the State of Missouri, adopted in the year 1865, and have carefully considered the same; that I have never, directly or indirectly, done any of the acts in said section specified; that I have always been truly and loyally on the side of the United States against all enemies thereof, foreign and domestic; that I will ever bear true faith and allegiance to the United States, and will support the Constitution and laws thereof as the supreme law of the land, any law or ordinance of any State to the contrary notwithstanding; that I will, to the best of my ability, protect and defend the Union of the United States, and not allow the same to be broken up and dissolved, or the government thereof to be destroyed or overthrown under any circumstances, if in my power to prevent it; that I will support the constitution of the State of Missouri, and that I make this oath without any mental reservation or evasion, and hold it to be binding on me.

The contestant, in his notice of contest, claims that the above oath is contrary to the Constitution of the United States; but the supreme court of Missouri has decided the oath and its requirement constitutional, (*Blair vs. Ridgely et al.*, 41 Missouri Reports, 63, 178,) and this decision, of the correctness of which the committee have no doubt, has been affirmed by the Supreme Court of the United States, by an equally divided court, and must be considered, for the present at least, as settled law.

The present registration law of Missouri was passed March 21, 1868. It provided that on or before the 23d day of March, 1868, and also on or before the 1st day of February, 1869, and biennially thereafter, the governor, by and with the advice and consent of the Senate, should appoint a superintendent of registration for each senatorial district in the State, except the county of St. Louis, whose duty it should be, between the first day of June and the first day of July next ensuing his appointment, to appoint three suitable, competent, and discreet citizens, who are qualified voters, as a board of registration in each county of his district, to serve until the next appointment of superintendent. The superintendent is required to fill any vacancies occurring in any of these appointments, and may remove, "in his discretion," "for incompetency or for any other cause," any one appointed by him.

The books of registration, which are to be furnished to the board for each election district by the clerk of the county court, after a form furnished to him by the governor of the State, must contain the oath of



loyalty prescribed by the sixth section of the third article of the constitution of the State, and no person applying can be registered by the board as a qualified voter unless he take and subscribe this oath, except in the case of persons relieved from disabilities under the provisions of the constitution, for whom a different oath is furnished.

The board are empowered to examine on oath every person applying for registration, and it is made their duty, "before entering any name on the list of qualified voters, diligently to inquire and ascertain that he has not done any of the acts specified in the constitution as causes of disqualification," and if *from their own knowledge*, or from evidence brought before them, they are *satisfied* that he is disqualified, they shall not enter his name on the list of qualified voters, even though he take and subscribe the oath of loyalty, but if he take and subscribe this oath, and not otherwise, they may enter his name on a separate list of "rejected voters."

During the six secular days before the tenth day before the day of general election, the board of registration of each county, with the supervisor of registration of the county, who, before the general election in 1868, was appointed by the governor, and since that time has been elected by the people, are to meet at the county-seat as a board of review, who can add to the list of voters in each district the names of persons whom they find to have been improperly rejected by the board, and they may strike from the list the name of any person who appears, from their own knowledge, or from evidence produced before them, to have done any of the disqualifying acts mentioned in the constitution, but not without at least two days' notice having been given to the person of the time and place when such objection would be heard. The board of registration and review, while sitting as such, has the powers of a circuit court to preserve order at and around their place of sitting, and may *compel* the attendance of witnesses. The board of registration, during their session in each election district, are required to appoint three qualified voters as judges of election in the district, and, immediately after the adjournment of the board of review, are to make two copies of the names of qualified voters in each election district, alphabetically arranged, and to deliver one to the clerk of the circuit court, and the other forthwith to one of the persons appointed by them as judges of election, who must, under heavy penalty, produce and deliver the same into the possession of the judges of election at the place and at the time of opening the polls. When any person on the list of rejected voters offers to vote, the judges of election are required to mark his ballot as rejected, and to keep it separate from the ballots of qualified voters.

If the board, or any member of the board, or any judge of election or other officer, knowingly enters upon the list of qualified voters one not entitled, or willfully excludes one entitled, or receives the ballot of any one whose name is not on the list, or rejects that of one whose name is on the list, he is liable to a fine of not less than \$100, nor more than \$500, and is disqualified from holding office thereafter in the State.

If the board of registration or review, from violence, threats, or intimidation, apprehend danger, they must report the same to the sheriff, constable, or other civil officers of the county, who are required to furnish a sufficient posse to enable the board to discharge their duties, and any person, by threats or otherwise resisting or impeding the board of registration or reviewer, are declared guilty of a misdemeanor and liable to fine and imprisonment therefor.

The judges of election are required to open the polls at 7 a. m., at



such place as the county court shall have designated, or failing that, at such place as the sheriff shall fix, and if the judges fail to act, the voters, when assembled, may appoint the judges of election. It is the duty of the sheriff to provide ballot-boxes and to deposit the same with the constable of the township, who is required to have it present at the proper time and place for the use of the judges of election.

The clerks of election are required to enter the name and number of every voter in the poll-book, and the judges of election to put on the ballot a number corresponding to the number of the voter in the poll-book. These ballots, after being counted, are to be sealed up and delivered to the clerk of the county court, and carefully preserved, and not to be inspected except in case of contested elections, or for evidence on the order of a proper court.

This last provision, it will be observed, enables, in a case of contested election, the ballot of each voter to be examined, and the persons voted for by each voter to be accurately determined, a provision, when it is desired to purge the ballot-box, of the first consequence. The facts with regard to the registration in Monroe County are as follows:

Soon after the new registration law of Missouri took effect in the spring of 1868, Charles F. Mayo was appointed superintendent of registration for the seventh senatorial district, composed of the counties of Howard, Randolph, and Monroe. He was recommended to the governor as a radical and appointed as such, and had previously acted and still acts with that party, and swears that he voted that ticket at the November election in 1868. It does not appear that he was a candidate for the appointment, or that he used any influence to secure it. Soon after his appointment, the democratic State senator from that district, and who was a candidate for re-election, proposed to him that if he would appoint good men, meaning democrats, as registering officers in that district, he would support him (Mayo) with his vote and influence for the office of sheriff in the county of Randolph, in which they both resided. To this Mayo replied that he would appoint good men, who would register everybody justly entitled to registration under the law. Similar language to this he appears to have used whenever applied to as to the manner in which he proposed to perform the duties of his office. It was afterward proposed to place from three to five thousand dollars in bank, to be paid to him in case he was not elected to the office of sheriff. It does not appear that anything was done upon this latter proposition, and Mayo, who is called by the sitting member and examined upon this subject, denies that these propositions were ever accepted, but says that in making his appointments and removals he was guided by what he thought to be right according to the law. He became an independent candidate for sheriff in the county of Randolph, and a democratic mass meeting held in the county during the progress of the canvass resolved that, "as a mark of their approval for the fair and impartial manner in which the registration had been conducted in that county and district, they would place his name on the democratic ticket for sheriff, and would support him." Mayo swears that he paid for having his name put on the democratic ticket, and that he applied to have it put on the radical ticket, and offered to pay for it, but was refused. He was not generally supported by the democratic party of the county for the office, as the vote for democratic presidential electors at that election in Randolph County was 1,412, and for governor, 1,417, while the entire vote of Mayo for sheriff was but 667; but as there were three other candidates in the field, two democratic and one republican, (the republican candidate receiving but about one-half the repub-



lican vote of the county,) it was sufficient to elect him, (pp. 158, 159.) While the registration was in progress a proposition was made to Mayo, on behalf of the secretary of state, that if he would resign his office as superintendent of registration he should have a better office than that of sheriff, (48, 49.) Mayo himself is called by the sitting member as a witness to the propositions made to him to induce him to appoint democratic registers, and the evidence that such propositions were made rest mainly upon his testimony; and his denials upon cross-examination of any corrupt action or intent in the matter are entitled to such weight as belongs to them as coming from a witness whose veracity has been admitted by the opposite side, by his being called by them as a witness, (pp. 103, 104, 148-151.) The first officers of registration appointed by Mayo, in all the counties, were republicans. The greater part of these, for various reasons, were afterward removed or resigned, and in Howard County the persons finally appointed and who made the registration were democrats. In Randolph and Monroe Counties all the persons appointed as registers, with, perhaps, a single exception in Randolph, were republicans. The first board appointed in Monroe County were Jerry Foreman, Dennis Thompson, and Jacob Springstein, the first two of whom were appointed upon the recommendation of J. H. Holdworth, an active republican and friend of the sitting member, and the last of whom served in the Union army during the war, and swears that he has acted with the republican party since its organization and voted for Grant for President and for Dyer for Congress. This board acted together five days, when Foreman and Thompson, not agreeing with Springstein as to the proper method to be pursued, although a majority of the board, and therefore having the direction of affairs in their own hands, abandoned the registration. Mayo, thereupon, on the recommendation of Springstein, appointed Andrew T. Scott and H. H. Burnham to take their places, but the latter, on the first day that he attempted to serve, learned that he was not eligible, because not registered in 1866, and therefore not a qualified voter; he thereupon declined to act, whereupon Orris W. Palmer was appointed in his place. Scott swears that he voted for Bell for President, in 1860, but for Mr. Lincoln in 1864, and for General Grant in 1868, and that he voted the whole republican ticket in 1868, except that he voted for the contestant for Congress, hearing him to have formerly been a whig. Palmer was a native of Vermont, and a republican; served in the Union army from April, 1862, to August, 1865, and voted for General Grant for President, in November, 1868. The evidence, in the judgment of the committee, fails to establish any corrupt agreement on the part of Mayo for the appointment of these men, or any of them, or any improper interference with them when appointed.

The instructions which he gave to the board at the commencement of the registration were as follows:

*To the Board of Registrars of Monroe County, Mo. .*

The board has a right, under the law, to examine the applicant touching his qualifications as to age and residence, and then to inquire from other sources whether he has done any of the acts mentioned in the constitution as causes of disqualification; and if, from the evidence, or their own knowledge, they believe the applicant disqualified, they will place his name on the rejected list; or, if they find that he is qualified, they will put his name on the list of qualified voters.

The board should be governed by the law, and ought not to be governed by instructions from other sources.

A man offering to register, but refusing to take the oath, should be placed on the rejected list, with a statement of his cause of rejection.

CHARLES F. MAYO,

*Superintendent of Registration for the Seventh Senatorial District of Missouri.*



On representations being made to him during the progress of the registration that the board were registering men charged with disloyalty, he addressed them the following letter :

*To Messrs. Springstein and Jacob Scott, members of the board of registration of Monroe County, Mo. :*

GENTLEMEN: Reports have come to me that objections have been made to persons registering under you, on account of disloyalty, and that you "have paid no heed to objections." This, I regard, is in violation of the registration law, and, if true, I shall regard it as sufficient cause for your removal.

I think it best for you to ask questions, in substance, as follows, (under oath:) 1st. Are you acquainted with the third section of the second article of the constitution of the State of Missouri; and if so, are you disfranchised by any of the clauses in said section? (If applicant is not acquainted with it, read it to him, and then propound the question as before.) 2d. As to age, residence, and general qualifications as voters under the law.

Unless you can give denial of the charges as before specified, your resignation will be acceptable, as my purpose and aim is to carry out the law, and nothing more.

CHARLES F. MAYO,  
*Superintendent Registration, Seventh Senatorial District, Missouri.*

On receiving the answer of Springstein and Scott to the above letter, he addressed them again as follows :

*To Messrs. Springstein, Scott, and Pelsus, members of the board of registration, Monroe County, Mo. :*

GENTLEMEN: The communication of Messrs. Springstein and Scott, of the 5th instant, denying certain charges made against them, to the effect that they had refused to pay attention to objections made by certain parties to persons registering in Monroe Township, together with a communication from Messrs. Spalding, Yager, Simms, and other Union soldiers, was received by me this day, and the contents of said communications are perfectly satisfactory, evincing, as they do, your purpose of carrying out the registration law of the State to the very letter. My desire and determination is, that the law shall be faithfully carried out in every particular. You will, therefore, proceed with the registration in your county, and complete it according to law. A petition has come to me, stating that the registry of voters in Union Township was not completed, and asking an additional day at that point. If you think it expedient, you will hold a session of the board at Middle Grove, in said township, on Saturday next, October 10, for the purpose of completing the registration in said township.

Yours, respectfully,

CHARLES F. MAYO,  
*Superintendent Registration, Seventh Senatorial District, Missouri.*

The law of Missouri gives a great and dangerous power to the superintendent of registration, to remove at his pleasure and without assignment of any cause the registers whom he has appointed, and to appoint others in their place, in the exercise of which power Mayo certainly disappointed the men upon whose recommendation he was appointed; but if the vote of the county of Monroe is to be rejected for errors connected with the registration, it must be found in the action of the board itself, and not in circumstances preceding or attending their appointment.

The method pursued by the board of registration is thus described by Jacob Springstein, one of their number, (pp. 18, 20, 21 :)

Question. What was the mode of proceeding?—Answer. If a person applied for registration he was first sworn to answer questions. If I thought it necessary, I would ask him his age in the first place. Next, would be his residence in the county, unless I was well acquainted with him. Next question, Are you well acquainted with the terms of the third section of the second article of the constitution of the State of Missouri? If they stated that they were not, I read it to them. If they stated that they were, I asked them if they had ever committed any of the acts in that section specified as cause of disqualification. If they stated that they had, they were placed upon the rejected list. If they stated that they had not, I would ask them if they had never given any aid or comfort to the rebellion. If they stated they had not, the question was, Did you ever enroll, and how did you enroll? If they stated they had enrolled as



disloyal or southern sympathizers, they were placed upon the rejected list. If they stated that they enrolled as loyal, they were generally registered, if they answered the questions satisfactorily and would take the oath of loyalty.

Q. Had there been any disagreement, previous to the removal of Mr. Burnham, between the registers, as to the mode of proceeding? If so, state it.—A. There was a difference of opinion between Mr. Thompson, Mr. Foreman, and myself, when the registration first commenced. They thought that every man registered as a qualified voter should prove his loyalty; and I thought where a man was a new-comer, and was not able to prove where he had been all the time during the war, and would take the oath, and answer all questions satisfactorily, he should be placed upon the list of qualified voters. There was a little difference at first. I wanted to swear them to answer questions first, and they wanted to administer the oath of loyalty first. We did not disagree on that. They had the majority, and I gave way to them.

Q. After Mr. Burnham was appointed, was there any difficulty as to the manner of procedure?—A. There was some disagreement. Mr. Burnham made a proposition that we would examine them one at a time, and then clear the room of all spectators, so that if any member of the board objected to their registering they would not know who to blame for it. The question was raised too in regard to questioning applicants as in regard to sympathy. I had Judge Holmes's, of the supreme court of Missouri, opinion on that question as it was published, and told them that the question of sympathy was embodied in the third section, and also in the oath of loyalty; that I did not think it necessary to ask the question any further than whether they desired the success of the rebellion. He also proposed to use the old registration books of 1866. We had not been using them up to that time, and I had left them at home; did not have them there. He said the old books of 1866 were *prima facie* evidence of disloyalty, and could be used against persons rejected.

Q. What had the opinion of Judge Holmes to do with the question of sympathy?—A. I thought from Mr. Burnham's conversation that he thought it right to reject a man who sympathized with relatives or friends engaged in the rebellion, at the same time had no sympathy for the cause, but sympathized as individuals.

Q. Are you certain that was Mr. Burnham's opinion?—A. I simply thought so from the way he talked to me.

Q. What had Judge Holmes's opinion to do with it?—A. Judge Holmes stated that the question of sympathy, as here used, must be accompanied with some act of a treasonable nature. I thought if a man desired the success or triumph of the rebellion he should be placed upon the rejected list, and was so placed in all cases where they acknowledged that they did so sympathize.

Q. You did not agree with Judge Holmes, then, in his view?—A. I agreed with him so far as I have told you. I thought his view was right. I don't know as I agreed with him either, as we went by the registration law.

Q. Upon the question of sympathy, did you take Judge Holmes's opinion as a correct interpretation of the registration law?—A. I did not, sir; we went by the law.

Q. Why, then, did you use that opinion against Mr. Burnham's view of the law?—A. I have told you why; because Mr. Burnham, I thought, wanted to run the question of sympathy further than the law required.

Q. Do you know any rebel soldiers or bushwhackers who registered as qualified voters in Monroe County, and voted at the last election?—A. I do not, sir; I would not have registered a man if I had known him to have been guilty of any of the acts contained in the third section of disqualifications.

Q. Are you a member of the republican party?—A. I have been acting with the republican party since its organization.

Q. Did you vote for Grant for President, and Dyer for Congress?—A. I did, sir.

Orris W. Pelsue, another member of the board, swears as follows as to the method pursued both by the boards of registration and of review, (pp. 23, 24:)

Jacob Springstein was chairman of the board, and conducted said registration under instructions received from Captain Mayo; all persons making application to register were first sworn to answer questions, and after being asked if they were acquainted with the terms of the third section, second article, of the constitution of the State of Missouri, adopted in the year 1865, were then catechised in detail to ascertain that they had not done any of the acts named in said section, and especially were the questions asked as to whether such applicant had taken up arms against the United States, or to the lawful authorities thereof, or to the government of this State, or had ever given aid, countenance, or support to any persons engaged in hostility thereto, or had ever left the State for the purpose of avoiding enrollment into the military service of the United States, or had desired the triumph of the rebellion over the arms of the United States, or had any sympathy with those engaged in the rebellion, and if he had ever enrolled, and if so, how; and in all cases where there was any hesitation in persons applying for registration in answering any and all questions propounded, the name of



the applicant was placed upon the rejected list, and in all cases where it could be reasonably gathered from the answers of the applicant that he was not entitled to be registered as a qualified voter under the law, his name was placed upon the rejected list, and in cases in which the board had doubt as to the right of the applicant to be placed on the qualified list, more questions were asked than were embraced in the instructions of the superintendent. The instructions of Captain Mayo were similar to those given by the superintendents of registration in the city of St. Louis to their registrars, and by many other superintendents in the State, and all persons whose names were placed upon the qualified list of voters were required and did take and subscribe to the oath of loyalty.

This affiant states that the board conducted the business of registration throughout his connection with it without any restraint, there being no violence, threats, or intimidation offered to the board, or any witness who appeared before the board, and that they felt free to reject, and did reject, all whom they believed to be disqualified under the law, and every facility was afforded to citizens to make objections to persons offering to register; and, in every case where objections were made to any person whose name had been placed on the qualified list, notice was given to the person so objected to, and an opportunity afforded to the objector to make such objections good before the board of review.

The session of the board of review was held in the court-house, in a room adjoining the sheriff's office, where all objections to the qualifications of persons objected to as voters were heard and considered, and such of the objectors and witnesses as appeared before said board of review were duly heard, and the name of every person against whom any evidence was brought to disqualify them as legal voters was struck from the qualified and placed upon the rejected list.

Ezekiel Vincent, esq., supervisor of registration, made objections to several persons whose names had been placed upon the qualified list by the board of registration, and the names of all persons objected to by the said Vincent were struck from the list of qualified voters, except one, and against him there was no evidence.

This affiant states that he was born and raised in the State of Vermont; removed to Iowa in 1851, and there remained until July, 1862, when he volunteered into the military service of the United States, and served as a member of Company F, Third Iowa cavalry, until January, 1864, and then re-enlisted in said regiment as a veteran during the war, and remained in its service until its close, in 1865, when affiant removed to the county of Monroe, State of Missouri, and where he has ever since resided; that he has ever been loyal to the government; that he belongs to the republican party, and was a warm supporter of General U. S. Grant for President, and at the last November election voted the Grant and Colfax ticket.

Andrew T. Scott, the other registrar, confirms the statement of his associates, (p. 24,) and further testifies as follows:

Question. Do you belong to what is called the radical party?—Answer. Yes, sir; since Mr. Lincoln's last election. In 1860 I voted for Mr. Bell for President; in 1864 I voted for Mr. Lincoln; in 1868 for Grant. I voted the radical tickets in 1868 with one exception; knowing Mr. Switzler was formerly a whig, I voted for him for Congress.

Q. During your intercourse with the people of Monroe County, during the last registration, were you either personally or officially mistreated by insults, threats, or otherwise?—A. Not in the least. I generally, when I went to a place where I was acquainted, made a few remarks before commencing registration, that I intended to register according to law.

Q. Do you know of any rebel soldiers or bushwhackers who were registered as qualified voters during the last registration?—A. I do not; I know I rejected none knowingly. In my own township (Union) and some others, I knew very near every one, except the new-comers. There was one rebel soldier that registered, who had served in the federal army some three or four years, and came with his papers—his discharge. I would have had no delicacy or fear in rejecting any rebel soldier.

No attempt is made to show that these men had any interest in advancing the prospects of any candidates at the approaching election, or that they know of the offers that had been made to Mayo, or that any influences were brought to bear upon them to induce them to register otherwise than as their judgment and conscience should dictate. They seem to have been men of repute in the county, and no attempt is made to impeach their veracity. Their statement must be taken as substantially true, and when compared with the provisions of the law upon the subject, shows a substantial compliance with those provisions.

It was the right of any citizen to object to the registration of any person applying therefor, either at the time of registration or subse-



quently, or before the board of review, and to have such objection tried by the board of review, and to have witnesses summoned for that purpose. It appears from the evidence, however, that no objections were made by persons other than members of the board, during the registration, except in two instances. In Monroe Township Jacob W. Cupp objected to twelve persons who had been registered, and who were notified, upon his objection, to appear before the board of review. But Cupp failed to appear there to make good his objection, and they remained upon the list. Ezekiel Vincent, who was supervisor of registration in Monroe County, and, as such, president of the board of review, also objected to some persons, nearly all of whom appear to have been, therefore, rejected as disqualified, (p. 23.) No evidence is offered to show that either the board of registration or the board of review threw any obstacles in the way of persons wishing to make objections to the registration of parties deemed by them to be disqualified, or failed to give attention to such objections when made.

But it is claimed that the large number, 1,652, registered in Monroe County as qualified voters in 1868, is itself evidence that the registration was a fraudulent one, because, as is charged in the answer of the sitting member, (p. 4,) there were not more than five hundred qualified voters in the county. Various witnesses are called and sworn, who variously estimate the number of qualified voters in the county as not exceeding from four hundred to seven hundred, but who do not give, and in several instances refuse to attempt to give, the names of any persons registered, and whom they deem disqualified. This evidence is too indefinite and uncertain to establish any fact pertinent to the inquiry in this case. Every one of the persons so registered was obliged to take and did take the oath required by the sixth section of the third article of the constitution of Missouri, which covers all the cases of disqualification referred to by these witnesses, and their evidence is really a charge of perjury against a thousand persons in the county of Monroe, a charge which the committee must find to be true in order to reject the vote of Monroe County for the reasons assigned.

The difference between the registration of 1866 and 1868, taken in connection with the fact that the greater part of the persons who made the registration in 1866 (when a registering officer was appointed for each term) are called and swear that they believe they registered all who were entitled to registration, is also claimed to show that the latter registration must have been fraudulent. That these registrations differed very much in their results is true, as appears from the following table of accepted and rejected voters as registered in each town in the county in 1866, and also in 1868:

Townships.	1866.		1868.	
	Accepted.	Rejected.	Accepted.	Rejected.
Jackson .....	94	248	425	182
Union .....	73	50	192	47
Marion .....	62	112	213	21
Woodlawn .....	19	67	73	39
Clay .....	10	84	121	10
Washington .....	51	64	150	30
Monroe .....	38	21	98	18
Indian Creek .....	30	18	74	25
Jefferson .....	25	84	168	63
South Fork .....	35	61	138	33
Total .....	437	809	1,652	414



The difference in number between the *rejected* voters of 1866 and 1868 may be accounted for, perhaps, from the fact that in 1866 all persons who applied for registration and were refused for any reason were, by law, put upon the rejected list, (General Statutes of Missouri, 906, section 9,) while in 1868 no one could be put upon the rejected list unless he had taken and subscribed the oath of loyalty prescribed by the sixth section of the third article of the constitution, (Laws of Missouri, 1868, 134, section 9.) It is a sufficient answer to the charge that the board in 1868 registered indiscriminately those who presented themselves for registration, that they rejected 414 persons who were willing to take, and did take, that oath, which is hereinbefore set forth, and to which, in this connection, the committee desires to direct particular attention.

The increase in the number of qualified voters in 1868 may be accounted for in part by the increased number of persons applying for registration, since in 1866 there were only 1,246 applied all told, while, in 1868, out of about 3,000 adult males in the county, 2,066 applied who were willing to take, and did take the oath of loyalty above mentioned; in part by the number of those who had come of age or had moved into the county since the close of the war, which one witness estimates as high as 600, (p. 135;) and in part, undoubtedly, by the different spirit of the registering officers in 1868 from those of 1866, and which, under the terms of the constitution and laws of Missouri relating to registration, could not fail to have a considerable influence upon the result. But better evidence than either of these was within the reach of the sitting member. The names of the persons who were registered, and also of those who voted in the county of Monroe in the fall of 1868, were preserved of record, and also the ballots cast, and the latter so marked that the ballot of each voter could be identified, and these ballots were actually produced upon the examination in this case, and the names of all the persons who voted for the sitting member in Monroe County thereby ascertained. If the sitting member therefore believed that persons were registered and voted in that county who were not entitled so to do under the constitution and laws of Missouri, he should have established this fact, and at the same time purged the poll, by showing such disqualification in each individual case, by the voter's own oath, or other adequate proof, and then showing for whom he voted, so that the House could make the proper deductions in deciding this case. This the sitting member has not attempted to do, and failing this, has not a right to ask the House to reject their votes upon secondary and far less satisfactory proof.

The constitution of Missouri requires that, after a system of registration should be established, *all evidence for or against* the right of any person as a qualified voter should be heard and passed upon by the registering officers, and thereupon the registration is made the sole evidence of the qualification of the voter to vote; and the Union men of Monroe County, having failed to urge the disqualification of these men before the registering board, would seem, by the terms of the law, to be forbid urging it elsewhere. It is claimed that they could not safely have made their objections before the board, but the evidence does not seem to sustain this claim. Of the ten men who registered this county in 1866, and who registered only 437 qualified voters in the county, rejecting 809 out of 1,246 applying, rejecting 408 men who were held qualified voters in 1868, eight were examined in this case, and none of them claim to have experienced any inconvenience or annoyance in consequence of the apparently rigid manner in which they performed



their duty. We cannot conclude otherwise than that the vote of Monroe County should be counted in this case, which makes the vote of William F. Switzler, *upon the returns*, 6,286, and of Daniel P. Dyer 5,576, showing a majority for the former of 710.

#### THE VOTE OF SALT RIVER TOWNSHIP, AUDRAIN COUNTY.

¶ The place designated by the county court for holding the election in this township was the tobacco factory on the public square. Being unable to get in here, the sheriff made proclamation that the election would be held at Ricketts' office, on the square, to which place the people present went; and the judges of election not being present, the voters present chose judges, to whom the sheriff delivered the ballot-box and poll-books, and also a list of qualified voters, certified by the clerk of the county court, (pp. 50, 63, 77.) Thus far the proceedings seem to have been regular, although there is evidence to show that it was the intention to have held such an election by judges other than the legal judges, had the latter been present in time to open the polls at 7 a. m., as required by law, (p. 205.)

The list of qualified voters for this township will be found on pages 201-203, and contains 217 names; but the poll-list kept at this election, which is found on pages 192-194, shows that 519 votes were received. The judges further, in making this return, certify that the contestant received 146 votes, the sitting member 71, or the precise number of qualified voters. It would be very unusual, although possible, that the entire list of persons registered as qualified should have been present to vote; but it is made the duty of the judges of election (Laws of Missouri, 1868, p. 136, sec. 17) to write the word "voted" after the name of each person on the list who shall vote, and on producing the list used at this poll (pp. 203-205) it is found that 74 names have no entry against them, (p. 81,) showing that they did not vote on that day. Three of those whose names are on the qualified list are called as witnesses—Alfred Hambleton, p. 72; W. W. Cedon, p. 70; and Miles J. Burns, p. 76—and swear that they were not present and did not vote at this poll on that day. There was still a method by which the real vote of the *qualified* voters of that township could have been ascertained. The ballots themselves were yet in the hands of the clerk of the county court, and so marked, if the law had been complied with, as that the ballot of each qualified voter who voted could be identified. The clerk of the county court, who was the political friend of the contestant, and of the sheriff, who seems to have manipulated affairs at that poll, was summoned as a witness by the sitting member and produced the ballots, but refused to open them or permit their examination. The returns themselves we think so tainted by obvious fraud and violation of law as to be valueless, and, not being permitted to be corrected by the means which the law of Missouri provides, should be rejected. This rejection reduces the vote of the contestant to 6,140, and of the sitting member to 5,505, and the majority of the former to 635. The sitting member claims that the votes cast at a poll opened by the judges of election at a quarter to eight o'clock in the morning and held open until interrupted by violence about 11 a. m., and at which he had a majority, should be counted, but the committee is of opinion that these judges, not having been present at the time fixed by law for the opening of the polls, lost their opportunity, and the judges chosen by the voters present became the legal judges of election for the day.



## THE VOTE OF WILSON TOWNSHIP, AUDRAIN COUNTY.

On the morning of the day of election in this township word was sent to two of the judges of election appointed by the board of registration that it would be dangerous for them to go to the election. The circumstances attending the receipt of these messages were such that they thought it advisable not to go to the polls until they could gather some of their friends to accompany them armed. They did so, and were thereby so delayed that when they reached the polls the time for opening them was passed, and other judges had been chosen by the voters present. The circumstances are such as seem to show that this result was one object of the messages they had received, (pp. 65, 80.) The list of qualified voters in this township will be found at pages 204-5, and numbered 78. But the poll-list shows that the acting judges of election at this poll received 151 votes, of which they marked 93 as accepted, and they returned 91 votes as cast for member of Congress, 49 for the contestant, and 42 for the sitting member. But a comparison of the list of qualified voters with that of persons who voted shows that 15 of the former did not vote, so that while only 63 qualified voters in the district have voted, 91 votes are returned as having been cast by qualified voters for members of Congress.

The clerk of the county court in this county having already, in the case of Salt River Township, in the same county, refused to produce and open for inspection the ballots cast at this election, it was not necessary to renew the attempt to get access to the ballots in this case, and the vote of this township, for the same reasons as in the case of Salt River, should be rejected, reducing thereby the vote of the contestant to 6,091, and of the sitting member to 5,463, and the majority of the former to 628.

## THE VOTE OF JASPER TOWNSHIP, RALLS COUNTY.

A copy of the poll-book kept at the election held in this township will be found at pages 206-209, and the reasons for omitting to correct the votes cast at this poll are given in the certificate of the clerk of the county court on page 209. They are technical reasons, such as have been held uniformly almost by courts and legislative bodies to constitute no valid ground for rejection in the absence of proof of fraudulent intent, and the vote of this township, which is certified to have given 15 votes to the contestant and 84 votes to the sitting member, should, therefore, be added to the other votes of the district, making the votes of the contestant 6,106, and of the sitting member 5,547, and the majority of the former 559. But the very question we are now considering was before the supreme court of Missouri in the case of *The People ex rel. Attorney General vs. Steers*, 44 Missouri, 224, and decided in accordance with the above view of the law.

## THE VOTE OF CALUMET, PIKE COUNTY.

The committee are asked to reject the vote of this township, because in a careful enrollment of the loyal inhabitants of the township, made in 1862, only 231 enrolled themselves as loyal, (see list 160-163,) while at the election in November, 1868, 609 votes are returned as having been cast, and 573 of them as qualified voters, and evidence is given that there had been no great addition to the population of the township, (pp. 89, 90.) From this the committee are asked to infer the fraudulent



character of the registration, and to reject the vote of the township. The committee think the evidence not sufficient to warrant such a conclusion and that the vote should be retained.

The result of the examination of the committee, therefore, is that the contestant received 6,106 votes at the election held in the ninth congressional district of Missouri, on the 3d day of November, 1868, for representative in the forty-first Congress, and the sitting member 5,547, and that the former by a majority of 559 votes was chosen such representative. They, therefore, recommend the adoption of the following resolutions:

*Resolved*, That Daniel P. Dyer is not entitled to a seat in this House as a representative in the forty-first Congress, from the ninth congressional district in Missouri.

*Resolved*, That William F. Switzler is entitled to a seat in this House as a representative in the forty-first Congress, from the ninth congressional district in Missouri.

---

#### MINORITY REPORT.

Mr. Cessna, of Pennsylvania, of Sub-committee of Elections, makes the following minority report:

The questions presented in the record in this case are of such grave concern, not only to the people of the ninth congressional district of Missouri but the entire people of the State, as well deserve the serious consideration and demand thorough and patient investigation upon the part of the members of Congress who are ultimately to pass upon them. It is, in my judgment, a struggle between the friends of the constitution and laws of the State and those who have opposed and made war upon the same from their adoption, ratification, and passage. It is a question of the triumph of law over anarchy, of fidelity over corruption, and of loyalty over treason. The people of the State of Missouri, in 1865, through their representatives in convention assembled, adopted a constitution, which was submitted to and ratified by the people in June of that year. From the date of its adoption by the convention a most persistent and determined war has been waged against certain of its provisions by those with whose opinions it did not accord. In season and out of season, in the courts and in Congress, before the people and at the polls, has this war been carried on against the constitution of Missouri and the laws made in pursuance thereof; and this Congress is asked to sanction such defiance of law by admitting to a seat upon this floor a gentleman whose only claim to admission is based upon the vote of a county where this disregard and defiance of law had, in the last election, undisputed sway. It is a transfer of the struggle from the shoulders of the people of Missouri and from the courts of the country to the floor of Congress. Before proceeding to give the result of my examination and investigation of this case, I desire to state that the representatives of the people of Missouri in their State legislature assembled decided that there was no legal registration, and consequently no legal election, in Monroe County in November, 1868, as will be seen by the following record, (see House Journal, 1868-1869:)

HOUSE OF REPRESENTATIVES,

February 16, 1869.

DEAR SIR: In accordance with the inclosed resolution, I have the honor to notify



you that there were no legal elections held in the counties of Dunklin, Oregon, Ripley, Shannon, Jackson, Wayne, and Monroe, and that vacancies for representatives now exist in this House.

Very respectfully,

JOHN C. ORRICK,  
*Speaker House of Representatives.*

His Excellency J. W. McCLURG,  
*Governor of the State of Missouri.*

*Resolved*, That the speaker of the house be requested to inform the governor that there was no legal registration or legal election for representatives in the counties of Dunklin, Oregon, Ripley, Shannon, Jackson, Wayne, and Monroe, and that there is a vacancy in the representation in this house from each of those counties.

J. C. S. COLBY,  
*Chief Clerk.*

Read and adopted February 16, 1869.

STATE OF MISSOURI, EXECUTIVE DEPARTMENT,  
*City of Jefferson, May 20, 1869.*

DEAR SIR: Notice having been given me on the 16th day of February last, as the law requires, by the presiding officer of the house of representatives, that vacancies exist in the offices of representatives of Dunklin, Oregon, Ripley, Shannon, Wayne, Jackson, and Monroe Counties, for the reason that there was no legal registration or legal election in said counties, you will therefore please issue writs of election to supply such vacancies. The day hereby designated for such elections is the first Monday in October next, it being the fourth day of said month; and the sheriffs of said counties shall give ninety days' notice of such elections.

Very respectfully, your obedient servant,

J. W. McCLURG.

Hon. FRANCIS RODMAN,  
*Secretary of State.*

While it is admitted that the proceedings of the State legislature do not bind the action of Congress, they furnish a very cogent reason for mature consideration and patient investigation before running counter to the will of the people of the State, as expressed by a large majority of their representatives in the legislature. The second article of the constitution contains two provisions (3 and 4) which have given rise to numerous contests in the courts of the State and United States. The said sections of the constitution are as follows:

III. At any election held by the people under this constitution or in pursuance of any law of this State, or under any ordinance or by-law of any municipal corporation, no person shall be deemed a qualified voter who has ever been in armed hostility to the United States or to the lawful authorities thereof, or to the government of this State, or has ever given aid, comfort, countenance, or support to persons engaged in any such hostility, or has ever, in any manner, adhered to the enemies, foreign or domestic, of the United States, either by contributing to them, or by unlawfully sending within their lines, money, goods, letters, or information; or has ever disloyally held communication with such enemies, or has ever advised or aided any person to enter the service of such enemies; or has ever, by act or word, manifested his adherence to the cause of such enemies, or his design for their triumph over the arms of the United States, or his sympathy with those engaged in exciting or carrying on rebellion against the United States; or has ever, except under overpowering compulsion, submitted to the authority or been in the service of the so-called "Confederate States of America;" or has ever left this State and gone within the lines of the armies of the so-called Confederate States of America with the purpose of adhering to said States or armies, or has ever been a member of, or connected with, any order, society, or organization inimical to the government of the United States or to the government of this State; or has ever been engaged in guerilla warfare against loyal inhabitants of the United States, or in that description of marauding commonly known as "bushwhacking;" or has ever knowingly and willingly harbored, aided, or countenanced any person so engaged; or has ever come into or has left this State for the purpose of avoiding enrollment of, or draft into, the military service of the United States; or has ever, with a view to avoid enrollment in the militia of this State, or to escape the performance of duty therein, or for any other purpose, enrolled himself, or authorized himself to be enrolled, by or before any officer, as disloyal or as a southern sympathizer, or in any other terms indicating his disaffection to the government of the United States in its contest with the rebellion,



or his sympathy with those engaged in such rebellion; or having ever voted at any election by the people in this State, or in any other of the United States, or in any of their Territories, or held office in this State or in any other of the United States, or in any of their Territories, or under the United States, shall thereafter have sought or received, under claim of alienage, the protection of any foreign government through any consul or other officer thereof, in order to secure exemption from military duty in the militia in this State or in the army of the United States; nor shall any such person be capable of holding in this State any office of honor, trust, or profit, under its authority, or of being an officer, councilman, director, trustee, or other manager of any corporation, public or private, now existing or hereafter established by its authority, or of acting as a professor or teacher in any educational institution or in any common or other school, or of holding any real estate or other property in trust for the use of any church, religious society, or congregation; but the foregoing provisions in relation to acts done against the United States shall not apply to any person not a citizen thereof, who shall have committed such acts while in the service of some foreign country at war with the United States, and who has, since such acts, been naturalized, or may hereafter be naturalized, under the laws of the United States, and the oath of loyalty hereinafter prescribed, when taken by any such person, shall be considered as taken in such sense.

IV. The general assembly shall immediately provide, by law, for a complete and uniform registration, by election districts, of the names of qualified voters in this State; which registration shall be evidence of the qualification of all registered voters to vote at any election thereafter held; but no person shall be excluded from voting at any election, on account of not being registered, until the general assembly shall have passed an act of registration and the same shall have been carried into effect; after which, no person shall vote, unless his name shall have been registered at least ten days before the day of the election; and the fact of such registration shall be not otherwise shown than by the register, or an authentic copy thereof, certified to the judges of election by the registering officer or officers, or other constituted authority. A new registration shall be made within sixty days next preceding the tenth day prior to every biennial general election; and after it shall have been made, no person shall establish his right to vote by the fact of his name appearing on any previous register.

The third section was intended to prevent those who had given aid, comfort, countenance, support, or sympathy to the rebellion, or those engaged in rebellion against the government of the United States, from voting. This provision of the constitution has been the object of attack from those excluded by it from voting, aided by those who sought political power at the hands of those whom it disfranchised.

The question of the validity of this provision of the constitution, in connection with the one requiring the voter to take and subscribe an oath that he had done none of the acts mentioned in the third section as causes of disqualification, came before the circuit court of St. Louis County as early as November, 1865, (soon after the adoption of the constitution,) in an action brought by Frank P. Blair, jr., *versus* Stephen Ridgely, and others, for refusing to accept his vote without his first taking and subscribing the oath of loyalty required by the constitution of the State.

The provisions of the constitution in this regard were held to be valid and binding by the circuit court, from which decision General Blair appealed to the supreme court of the State. The case came before that court, and in March, 1867, the decision of the circuit court was affirmed by a unanimous bench. The case is reported at great length in the 41st vol. Missouri reports, and the opinion of the court, delivered by Chief Justice Wagner, seems to be exhaustive as to the power of the State to disfranchise those who aided and were in sympathy with the rebellion. This case was taken by appeal to the Supreme Court of the United States, where the decisions of the State courts were affirmed. The same question arose upon a similar provision in the constitution of the State of Maryland, in the case of *Anderson vs. Baker*, (23d Md. Rep., p. 531,) and the same doctrine was held by the supreme court of that State. The authority of the people of a State to disfranchise any of its citizens who engaged in rebellion against the government of the United States seems to be well settled. It would be strange indeed were it otherwise.



Although the courts of Missouri held this disfranchising clause of the constitution to be valid and binding upon the citizens of a State, it seems not to have been acquiesced in, accepted, or obeyed by a very large number of the people of the State. The binding authority of the constitution of the State and the decision of its highest judicial tribunal were denied by the contestant, Mr. Switzler. In the notice of contest served upon the sitting member, the contestant assigns the following as one of the grounds of contest:

7. That the test oath required of voters by the constitution of Missouri, in order to register and vote, is repugnant to the Constitution of the United States; therefore I claim and insist that all of the persons who voted for me in said district "as rejected voters" be counted for me, and added to my poll in the foregoing table.

This notice is dated on the 16th of January, 1869—four years after the circuit court and *two years* after the supreme court of Missouri had decided the constitution to be valid and binding. To show the number of "rejected voters" who voted for him, he obtains the certificates of the clerks in the various counties in the district, and makes them a part of the record in the case, (see pp. 58, 59, and 60.) If the constitution of the State can thus be ignored by the contestant, who seems to claim to be the representative of this class of persons, it is not a mere surmise that such people themselves would defy the law. The legislature of the State, December 16, 1865, in pursuance of section 4 of article 2 of the constitution, before recited, passed an act providing for a system of registration. (General Statutes of Missouri, p. 904.) Section 1 of that act provided that the governor of the State should appoint one competent and discreet citizen in each county of the State as supervisor of registration for such county. Under this section of the law the governor of the State appointed for Monroe County A. J. Campbell. The second section of the act provided for the appointment of a register in each election district of the county by the supervisor of such county. There being ten election districts in Monroe County, there was, consequently, that number of registrars appointed by the supervisor.

The eleventh section of the act provided that, on the four secular days next preceding the tenth day before the general election, the supervisor of the county, together with the local registrars, should meet as a board of appeals, with the power to revise, add to, or take from the lists of voters as ascertained by the local registrars. The legislature of the State, at the same session, passed a supplemental act, (General Statutes, p. 910,) the first section of which made it incumbent on the supervisor of registration to make out and forward to the secretary of state a certified copy of the registration thereof, and provided that the same should be evidence of the facts therein stated. This was complied with; and the record shows that the entire number of persons in Monroe County in 1866 entitled to vote under the constitution and laws of the State, as ascertained by this board of eleven "good and discreet citizens," was four hundred and twenty-nine, (pages 168, &c.) It further showed that there were *seven hundred and ninety-eight* others who applied for registration and were rejected by the board because of their disqualification under the constitution of the State, (pages 216, &c.,) making in all one thousand two hundred and twenty-seven disqualified and rejected voters. The truthfulness, fairness, and standing of the gentlemen composing this board is nowhere questioned by the contestant. They seem to have been residents of Monroe County for a great number of years, and their character for truth and veracity stands unchallenged. This being true, their official and sworn statements are entitled to the same weight as the testimony of any other good citizen.



The act of December, 1865, provided also for the election of a supervisor for each county, having the same powers as were vested by said act in the governor's appointee. This seems to have given the control of matters in some counties into the hands of those who were opposed to enforcing the provisions of the constitution and laws; and to prevent their abuse the legislature of the State, on the 30th day of January, 1868, passed an act (Acts of Missouri, 1868, p. 131) authorizing the governor of the State, by and with the advice and consent of the senate, to appoint a superintendent of registration in each senatorial district in the State, with power to appoint a board of three in each county in such district as the board of registration. This was a very great change in the law of 1866, inasmuch as it placed the power of appointment in the hands of a "senatorial superintendent," and confined the number of registrars to three for the whole county instead of one for each election district therein. Under this act of 1868 the governor appointed for the seventh senatorial district, composed of Monroe, Howard, and Randolph Counties, Charles F. Mayo, of the latter county, as superintendent. Monroe County is in the ninth congressional district, while Howard and Randolph are in the eighth (Mr. Benjamin's) district. It will be necessary to inquire into the registration in each of these counties to ascertain the motive for what seems to me to have been an open and manifest violation of law in the county of Monroe. It appears from the evidence in the case that Mayo, in the first place, appointed none but republicans in each of the three counties as officers of registration; and it would seem from his own evidence (page 148) that, soon after his appointment, he was sent for by Thomas B. Reed (the then democratic representative in the State senate and a candidate for re-election) to go to Huntsville, the county seat. In pursuance of this request, Mayo went, as he says, and had a conversation with Reed, who told him that, if he would appoint "*the right kind of men*" as registrars, he (Reed) would support him (Mayo) with his vote and influence for the office of sheriff and collector of Randolph County. This seems to have been the first conversation, and, indeed, the first thought, that Mayo ever had in reference to being a candidate for office in Randolph County. Subsequently to this time Reed, as will be seen by the sworn evidence, offered to place from \$3,000 to \$5,000 in bank to the credit of Mayo as a guarantee of his ability to elect him (Mayo) sheriff. Mayo shortly thereafter announced himself as an independent candidate for sheriff of Randolph County, and was elected. The county electing him on the same day gave Seymour, for President, 1,412 votes; Grant, for President, 223 votes; making a clear majority of 1,189 for Seymour over Grant.

In Monroe County Mayo, in the first place, appointed Jacob Springsteen, Jerry Foreman, and Dennis Thompson as registrars, (page 156.) In pursuance of their appointments and qualifications these officers entered upon the discharge of their duties, and acted together for five days, when the two last-named were forced to suspend registration by the conduct of Springsteen and those who were seeking registration. The testimony of one of them, Mr. Thompson, is here submitted, as follows:

I am forty-five years of age; reside in Jefferson Township, Monroe County, Missouri, and have lived in that township for forty years. I was the registering officer in 1866 for that township, and registered all that were qualified under the law at that time. Those I rejected were rejected for cause. A great many of them were rejected upon their own examination. Many of them said they did not desire to be placed upon the qualified list. Between the years 1866 and 1868, I don't think the number of qualified voters was increased to more than fifteen or twenty. I was pretty well acquainted



with every man in the township during the war, and knew their sentiments. The Union men of the township would meet together frequently at each other's houses, and talk together about the number there were of reliable Union men in the township. The number was very small—not more than seven or eight. In 1862 and 1863 the whole thing seemed to be going one way, and men on the southern side boldly expressed their opinions. I had been raised in the township, and knew all the people very well. Under a fair and liberal registration of the voters at the last election, I should not think there ought to have been more than forty voters. I was appointed one of the board of registration in 1868, and acted in conjunction with Springsteen and Jerry Foreman for five days. Springsteen would not agree to anything that we would do—I mean Foreman and myself. When we would reject an applicant he would say to the people present that he thought we were running great risk in rejecting those we thought ought to be on the rejected list. He would continually take sides with the rebel element against us. He frequently said that any person who would take the oath ought to be registered as qualified, unless we knew something personally against him ourselves; that we had no right to summon witnesses; that if a person applied for registration and took the oath he ought to be registered. This Foreman and myself dissented from. We thought that we had a right to inquire into the loyalty of applicants, and require of them proof. We came to the conclusion that we could not accomplish anything, as he was backed up and supported by the disloyal element, his conduct making the rebels more and more down upon us.

It seems from this evidence that after a majority of the board would decide upon the qualification of an applicant to vote, Springsteen would not only dissent from the decision of his associates, but take sides with the rejected voter against them. The majority, finding that they could not proceed in order with their work, suspended the registration. Mayo thereupon, taking sides with Springsteen, and acting upon *his* recommendation, removed Thompson and Foreman, and appointed Andrew T. Scott and Hiram H. Burnham, as will be seen by the following certificate:

*To the Clerk of the County Court of Monroe County, Missouri:*

SIR: You are hereby notified that I have this day appointed Andrew Scott and Hiram H. Burnham as members of the board of registration, within and for the county of Monroe, State of Missouri, in place of Dennis Thompson and Jerry Foreman, who have been removed from office by me.

CHARLES F. MAYO,  
*Superintendent of Registration for the Seventh Senatorial District, Missouri.*

Given under my hand this 11th day of September, 1868.

C. F. MAYO.

This man Burnham was not permitted to serve, but was removed, as will be seen by the following notice:

MOUNT AIRY, MO, September 29, 1868.

*To the Clerk of the County Court of Monroe County, Missouri:*

SIR: I hereby notify you that I have this day appointed Orris W. Pelsue, of the county of Monroe, a member of the board of registration, within and for said county, in place of Hiram H. Burnham, removed for non-attendance to duty.

CHARLES F. MAYO,  
*Superintendent of Registration for the Seventh Senatorial District, Missouri.*

The majority of the committee say that he was removed because he was not a registered voter of the county in 1866, and that the law required that he should be. Jacob Springsteen also says, when pressed for a reason for Burnham's removal, that it was because he was not a registered voter in 1866. The order for his removal not only shows that he was not removed for any such cause, but the law of Missouri did not require that he should be.

The second section of the registration law of 1868 provides that the superintendent shall appoint "three suitable, competent, and discreet citizens, who shall be *qualified* voters under the constitution and laws of the State," as the board of registration. The law does not require



that he should *have been a registered voter*, but that he should have the qualifications of a voter. That is, no one was to be appointed officer of registration who had given aid, comfort, countenance, or sympathy to the rebellion.

The cross-examination of Jacob Springsteen (pages 20 and 21) develops the cause of Burnham's removal:

Q. After Mr. Burnham was appointed, was there any difficulty as to the manner of procedure?—A. There was some disagreement. Mr. Burnham made a proposition that we would examine them one at a time, and then clear the room of all spectators, so that if any member of the board objected to their registering they would not know who to blame for it. The question was raised, too, in regard to questioning applicants as in regard to sympathy. I had Judge Holmes's, of the supreme court of Missouri, opinion on that question as it was published, and told them that the question of sympathy was embodied in the third section, and also in the oath of loyalty; that I did not think it necessary to ask the question any further than whether they desired the success of the rebellion. He also proposed to use the old registration books of 1866. We had not been using them up to that time, and I had left them at home; did not have them there. He said the old books of 1866 were *prima facie* evidence of disloyalty, and could be used against persons rejected.

Q. After the removal of Mr. Burnham, was Mr. Pelsue appointed on the recommendation of yourself?—A. I think, in all probability, he was; don't remember positively.

Q. Where did you get what you call Judge Holmes's decision?—A. I got it out of a newspaper; don't remember what paper. Also saw it in book form, in the possession of Mr. D. H. Moss.

Q. Did Mr. Moss furnish you the paper?—A. No, sir; I called his attention to it. He said that was all right, and that he had it in the office.

Q. Did you know that the majority of the supreme court overruled Judge Holmes in that opinion?—A. I did not.

Q. That opinion of Judge Holmes was in the Woodson case, was it not?—A. I think it was *State vs. Woodson*.

Q. Did not Mr. Moss tell you that the majority of the court decided the other way?—A. I don't think he did.

Q. After the appointment of Mr. Pelsue, was there any further disagreement with the board of registration?—A. None. I don't think there was any at all.

Q. What had the opinion of Judge Holmes to do with the question of sympathy?—A. I thought from Mr. Burnham's conversation that he thought it right to reject a man who sympathized with relatives or friends engaged in the rebellion, at the same time had no sympathy for the cause, but sympathized as individuals.

Q. Are you certain that was Mr. Burnham's opinion?—A. I simply thought so from the way he talked to me.

Q. What had Judge Holmes's opinion to do with it?—A. Judge Holmes stated that the question of sympathy as here used must be accompanied with some act of a treasonable nature. I thought if a man desired the success or triumph of the rebellion, he should be placed upon the rejected list, and was so placed in all cases where they acknowledged that they did so sympathize.

Q. You did not agree with Judge Holmes, then, in his view?—A. I agreed with him so far as I have told you. I thought his view was right. I don't know as I agreed with him either, as we went by the registration law.

Q. Upon the question of sympathy, did you take Judge Holmes's opinion as a correct interpretation of the registration law?—A. I did not, sir; we went by the law.

Q. Why, then, did you use that opinion against Mr. Burnham's view of the law?—A. I have told you why; because Mr. Burnham, I thought, wanted to run the question of sympathy further than the law required.

Burnham, it seems, was not permitted to have an opinion of his own, and when he asked for a copy of the registration of 1866, with a view of ascertaining who had then been rejected, Springsteen told him that he had not the list with him, but had left it at home. The law expressly directs the clerk of the county court to make and furnish to the board a certified copy of the previous registration. This was done by the clerk, but Springsteen says that, instead of taking it with him, he left it at home, and never referred to it during the entire registration. The further fact, as it appears from the testimony of Springsteen, is that Burnham had differed with him in reference to a dissenting opinion given by one of the judges of the supreme court in the case of *State vs. Woodson*. The fact that Burnham differed with Springsteen became



known to Mayo through some channel or other, and thereupon he wrote Springsteen the following letter, (page 19):

HUNTSVILLE, Mo., September 15, 1868.

DEAR SIR: I have asked Mr. Burnham to resign, and you two will proceed with the business of registration at the times and places appointed, and I will soon appoint another to fill the place of Mr. Burnham. Will you please recommend some suitable person to me to fill the vacancy. Please send me the name of some one who will agree with you in the manner of conducting the registration, as I would like very much for the registration to proceed without any further interruption. Please send me a list of the places that have not been registered according to notice, and I will appoint other times for those places.

Yours, &c.,

CHARLES F. MAYO.

Messrs. JACOB SPRINGSTEEN and ANDREW SCOTT.

"I have asked Burnham to resign. \* \* \* \* Please send me the name of some one *who will agree with you* in the manner of registration." \* \* \* Here is proof positive from Mayo himself that Burnham was not removed because *he was not a registered voter*, but because he did not "agree with you (Springsteen) in the manner of registration." Burnham was removed, and one O. W. Pelsue appointed in his place. P. D. Pelsue was one of the registrars of 1866, and it is in evidence that said P. D. Pelsue voted for contestee. There is no such evidence, however, as to O. W. Pelsue, the appointee of Mayo. All of this had been done to get a board who would agree with Springsteen. It was finally accomplished by the appointment of Scott and Pelsue.

The ninth section of the registration law of 1868 is as follows:

SEC. 9. The board of registration shall have power to examine, under oath, any person applying for registration as to his qualifications as a voter, and they shall, before entering the name of any person on the registry of qualified voters, *diligently inquire and ascertain* that he has not done any of the acts specified in the constitution as causes of disqualification; and if, from their own knowledge, or evidence brought before them, they shall be satisfied that any person seeking registration is disqualified under any provision of the constitution, they shall not enter his name on the list of qualified voters, though he may have taken and subscribed before them the oath of loyalty aforesaid, but, if he has taken and subscribed such oath, shall enter his name on a separate list of persons rejected as voters, and in connection with such entry they shall state the grounds of the rejection, and they shall also note every appeal from their decision by making an entry of the fact opposite the name of the party taking such appeal. The board of registration, or any member thereof, shall have power to administer oaths to all parties appearing before them for registration or as witnesses.

"And they shall, before entering the name of any person on the registry of qualified voters, diligently inquire and ascertain that he has not done any of the acts specified in the constitution as causes of disqualification." Yet Springsteen swears that *there was not a single witness summoned* before the board during its entire session, nor was there a *single rejection*, except upon the *answer* and at the request of the applicant himself. The majority of the committee say that the law was substantially complied with by the board of registration. I assert that neither its letter nor its spirit was complied with. The law required "diligent inquiry" to be made as to the qualification of voters in each individual case, before their names should be entered upon the list of qualified voters, while it is shown by the evidence of the board themselves that *there was not a witness summoned, sworn, or examined by them* during the entire registration. The majority of the committee say that the board rejected a large number of persons who applied for registration. Springsteen swears that not one was rejected except upon the request of the applicant himself or upon his own examination.

Q. In the rejections that were made throughout the county, while the board of registration was in session, I ask you if it was not universally the case that the men were



rejected upon their own examination?—A. With a few exceptions they were. Well, while the board of registration was in session, I will say they all were; some few were rejected on the statements of other persons here before the board of review.

Q. But before the board of registration—all that were rejected by the board of registration were the men who disqualified themselves on their examination?—A. Upon their answers, I think so, except the five first days, while Thompson and Forman were here. Then some were rejected that were rejected on testimony given in.

In 1862, General John M. Schofield, then in command of the Missouri State militia, under the direction of the governor of the State, directed the enrollment of all loyal men into companies, regiments and brigades, and we find that there were but *one hundred and forty* enrolled as such in the entire county. (Pages 210, 211, 212, 213, and 214.) We also find that not more than fifty men in all in that county enlisted in the United States Army during the war, while from *ten to twelve hundred* were, at some time or other during the war, in the *rebel service*. (Evidence of J. H. Holdsworth, p. 101; William Burnham, p. 136.) The unanimity with which the people of Monroe County assisted and sympathized with the rebellion is shown by the testimony of George W. Foster, Henry S. Smith, Jesse M. Genty, Thomas S. Ruby, and others who voted for the contestant for Congress and against the sitting member.

The testimony of Ruby, page 84, is quoted in full, and is as follows:

THOMAS S. RUBY, of lawful age, being produced, sworn, and examined on the part of the contestee, deposeeth and saith as follows, to wit:

Question. Where do you reside?—Answer. Louisiana, Missouri.

Q. What is your occupation?—A. Physician.

Q. State where you resided in 1861, 1862, and 1863.—A. In Ralls County, on the line between the counties of Ralls and Monroe.

Q. How long have you lived there?—A. I moved there in the summer of 1860.

Q. What business did you follow there?—A. I practiced my profession and farming.

Q. Were you there at the commencement of our national troubles?—A. I was.

Q. Were you extensively acquainted in the county of Monroe?—A. I was acquainted with a large number of people.

Q. Had you or not the means of knowing the sentiment of the people of that county in reference to their loyalty or disloyalty to the government?—A. Yes, I had a very fair means of knowing.

Q. State what that sentiment was, as you then knew it?—A. It was nearly universally disloyal.

Q. What proportion of loyal men was there among the population of that county, as far as you know?—A. I do not think there was more than ten in every hundred, and probably not that many.

Q. State if you know of any military organizations hostile to the Union, which were organized and drilled in that county in 1861 and 1862.—A. I know of quite a number of them. Have seen them drilling myself.

Q. State if you had any difficulty in getting through the county of Monroe while practicing your profession, or in pursuing any other business; if so, state what.—A. Yes; was stopped frequently by rebel pickets and detained, and sometimes forced to return to my home.

Q. Were you acquainted with many of these men you saw, and were they residents of Monroe County?—A. I knew most of them, and they were residents of Monroe County.

Q. State if you know of any loyal organizations of citizens of that county, in any portion of the county.—A. No, sir; I do not.

Q. State if the people generally were bold and outspoken in their disloyalty.—A. They were.

Q. State if a Union man could express his sentiments among that people with safety to himself.—A. He could not. I know of but one man that undertook to do so, and he was killed by them in his own house. This man was named Granville Carter, and was killed in the winter of 1861-'62.

Q. After this killing of Carter, did you hear any public expression in the neighborhood in which you lived of loyalty to the government?—A. I did not.

Q. Did this sentiment seem to be confined to those who were in arms, or to the people generally?—A. It seemed to be universal.

Q. State how many were Union men of your acquaintance in the neighborhood in which you lived, and what was the treatment of them by the rebels.—A. I knew of but five after Carter was killed, and they were threatened publicly, in a meeting held



by the rebels, to be either killed or otherwise disposed of; they were publicly mentioned and singled out in the meeting.

Q. Please state if your attention has been called to the registration of Monroe County for the year 1868, and if so, whether you have examined the list of qualified voters for that year.—A. My attention has been called to it, and I have partially examined the list.

Q. State what proportion of the number registered as qualified voters, with whom you are acquainted, were active and openly disloyal to the government.—A. In about the same proportion that Union men bore to the disloyal men, as before stated, to wit, about nine-tenths disloyal, and one-tenth loyal.

Q. If proper effort had been made by the officers of registration for that county, could these facts have been shown?—A. I think so, without much difficulty.

Q. Was not Monroe County one of the most disloyal counties and communities in the whole State of Missouri?—A. It was, as far as my knowledge extends.

Q. Was it not the general rendezvous of the rebel military organization in northeast Missouri?—A. I think it was. Mart. Green, Porter, and Snyder had the largest commands of any rebel officers, and they quartered for some time in Monroe County.

Q. State if you know of any military organization of rebels in neighborhoods where the loyal sentiment predominated.—A. I never knew of them to organize and drill in communities hostile to them.

Q. State the names of the five men of your acquaintance who were loyal, in the neighborhood in which you lived?—A. Alfred Minuefee, Hiram Wanemack, Thomas Campbell, Colonel O. C. Tiuker, and myself.

Q. Were you in the federal army during the war, and if so, at what time, and in what capacity you entered the army?—A. I was, from 1864 to the close of the war, assistant surgeon in the volunteer army.

Q. How long have you been a practicing physician?—A. Sixteen years.

Q. State which ticket you voted at the last general election?—A. I voted the democratic ticket, including W. F. Switzler for Congress.

And further deponent saith not.

THOMAS S. RUBY.

As to the sentiments of the people of Monroe County during the war there is not a word of *contradictory evidence* in the whole record. The sentiment of the people seems to have been as nearly unanimous in favor of the rebellion as at any place in the South. That a war was waged upon the soil of Missouri from the beginning to the end of the rebellion, and that the people of that State were divided among themselves, is a part of the history of the country, which no evidence is needed to establish. In the record in this case is contained the evidence of A. J. Campbell, who was the supervisor of registration in 1866, the testimony of Ezekiel Vincent, who was the supervisor in 1868, by appointment of the governor, and the testimony of several others, who were the officers of registration in 1866, all of whom, without a single exception, sustain the allegation that there was a full registration of all the qualified voters in 1866, and that the increase in the population in Monroe County has been no more than the decrease by death and removals. Yet the board of which Jacob Springsteen was chairman in 1868 registered one thousand six hundred and fifty-two as qualified voters, or nearly *four times* the number registered in 1866. The contestant does not undertake to show the reason for this great increase in the vote of Monroe County. In the case of *Blair vs. Barrett*, decided in the thirty-sixth Congress, Mr. Dawes then made a very able report, and, with the reasons therein given for the rejection of six hundred and more votes, that were returned for Mr. Barrett, used the following language:

The evidence discloses a large and wholly unexplained increase of the aggregate vote for members of Congress at this election over that cast at a warmly-contested and spirited canvass for the same office at the last election, two years before. At that election the aggregate vote was 13,865, while at this it swelled to 19,356—an increase of 5,491. It further shows that while Mr. Blair, who was a candidate at both elections, and the candidate of the American party, each received the full amount, and a slight increase of the vote cast for them respectively at the last election, nearly the entire amount of this great accession of votes, viz: 4,772 votes, was cast for the sitting member over those cast for the candidate of his party at the last election. The 13,865 votes



cast at the last election were divided as follows: For Mr. Blair, the candidate of the "free democracy," 6,035 votes; for Mr. Kennett, the candidate of the American party, 5,549 votes; for Mr. Reynolds, the candidate of the "national democracy," 2,281 votes. At this election the 19,356 votes were cast as follows: For Mr. Blair, 6,631 votes; for Mr. Breckinridge, the candidate of the American party, 5,668 votes; and for Mr. Barrett, who was the candidate of the national democracy, 7,057 votes. Thus, it will be seen, that while the vote for Mr. Barrett over that cast for the candidate of his party at the last election had increased 4,776 votes, there had been no corresponding falling off either in the vote of Mr. Blair or in that of the candidate of the American party. On the other hand, the vote for these two gentlemen had also increased; that of Mr. Blair 415 votes, and that of Mr. Breckinridge 119 votes. While a moderate increase of votes is readily accounted for by the natural increase of population and growth of the city, yet so great an increase in two years must, in the opinion of the committee, if honest, be traceable to some known, distinct, and palpable cause which might, if it existed, have been easily pointed out and made apparent during the investigation. It is evident that the large accession of votes to the sitting member, over those cast for the candidate of his party at the previous election, did not result from a change of party relations among the voters. If it had been, there would have been a corresponding falling off from the vote for one or the other of the candidates of the other parties, yet they each not only maintained but increased their former vote. If such increase had been attributable to increase of population, it must have been, under the law requiring a year's residence in the State before voting, from an addition to the population which had arrived in the city a year previous to the day of the election, if from out of the State, or from some other part of the State of Missouri, three months at least before that day. The presence of a new voting population of 5,000, with all the families, and other indications of their existence which move with them wherever they go, and stop with them wherever they abide, could hardly escape notice for a year, or even three months. It could hardly be expected, either, that any such actual and *bona fide* accession to the voting population would have cast its entire strength for the candidate of one party alone. To some extent such increase would naturally be expected to distribute itself somewhat among all parties. The committee has not been pointed to any instance elsewhere of so great an increase to the voting population of such a territory in so short a time, without any known cause or source, or special indication of its presence, and all of one political faith, and casting its first vote in a body for one of three different political candidates all at the same time and place equally active in canvassing for votes. This district is divided into thirty-five election precincts or sub-districts, and any honest increase of votes arising from natural increase of population would generally find itself distributed among them all; yet it is nearly all found in seven or eight out of the thirty-five. These remarkable features of this case, disclosed in the outset, led the committee early to direct a most scrutinizing inquiry into the manner of voting, the conduct of the officers, &c.

In the vote for congressman in 1866, in Monroe County, the contestant, who was at that time a candidate, received a little less than 250 votes, while his competitor, Mr. Anderson, received about the same vote as cast for Mr. Dyer in 1868. The entire increase of the vote in 1868 of 1,060 was cast for the contestant. From all the facts and circumstances in and surrounding this case, I am clearly of the opinion that the large increase in the vote of Monroe County was brought about by the removal from office of the first appointees as registrars and the appointment of others in their stead; and that this was induced by corrupt means, operating upon the mind of the superintendent at the time the changes were made, and it makes no difference whether Scott and Pelsus were parties to the corruption or not, so that the fraud and wrong were accomplished and perpetrated upon the law of the State, through them, as the instruments in the hands of Mayo. In Randolph County, the home of the superintendent, the officers first appointed were forced to resign their positions by the acts, doings, and conduct of Reed, Hall, and others. The disposition of Skinner, one of the registrars, is as follows:

WILLIAM A. SKINNER, of lawful age, being produced, sworn, and examined on the part of the contestee, deposeseth and saith:

Question. How long have you lived in Randolph County?—Answer. I think, if I recollect right, it is almost forty-three years.

Q. Were you one of the registering officers of this county last year; and if so, how



long did you serve?—A. I was appointed by Captain Mayo as registering officer, and received pay for thirty days' service.

Q. Where did you register—in what township?—A. Registered in Silver Creek Township, a part of two days.

Q. State what occurred at that precinct, as near as you can recollect.—A. When I got there in the morning, I found a good many of the people had collected together, and Captain Reed had an appointment to make a speech. We didn't commence registering until after he had made his speech. In his speech he tried to show the people that it was their right to register and vote, and urged them to do so. After the speech was over we went to the school-house to commence registering. Captain Reed came into the house to give some instructions as to commencing the books. He and I differed directly as to who should be registered. He contended that he would register all the reconstructed enrolled militia. He also contended that men's names should be put on the book who refused to take the oath of loyalty. I finally agreed to keep a separate list of those who failed to take the oath, that he might use as he pleased. He still contended that we should register the reconstructed militia, and said if we did not register a certain class of men he would bring a suit against us immediately. He asked the board to decide whether they would register these men or not. I told him they would not be registered by my consent. There was general confusion all that day between Captain Reed and the board, and but little was done. The second morning, when I got there, I found that Botts had resigned; Burckhardt and Reed, both present, contending that those parties who would not take the oath should be registered somewhere. There was general confusion kept up until about nine or ten o'clock. I asked Captain Reed to leave the room; that I thought we would get along better. Some time before that I had seen a petition to Captain Mayo, with about forty or fifty signers, asking him to remove me and appoint some one who would register according to law. Burckhardt seemed to be trying to get men registered who were not entitled to registration under the law. Captain Reed left there, as I learned, about noon on the second day, telling some of them that he would floor us when we got to Huntsville. The work went on more quietly, and the day passed off without further trouble. We came from there to Huntsville on the third day. We had got somewhat confused, Ferguson and I, and concluded we would not commence registering until another man was appointed in Botts's place. I went to the county clerk, who had furnished us the books, and asked him to show me, on the book, where to register men who would not take the oath. He looked over the book, and told me there was no such place on the book; that I was right in not putting them on the book. Burckhardt was still contending that every man who applied had a right to have his name registered somewhere. The board couldn't agree upon any plan upon which they would register. They got up a general confusion; the superintendent seemed not to be ready to commission the man he had appointed. Ferguson, as I thought, had rather backed down from his first position. I thought the pressure was a little too heavy for one man to bear; I tendered my resignation, stating that I could not carry out the law as it stood, and that if outsiders had to run the machine, I didn't want to have anything more to do with it. My resignation was accepted, and I went home.

Q. During this time that you were waiting for Mayo to appoint a successor to Botts, did you observe him in conversation with either Burckhardt, Hall, or Reed?—A. I didn't see him talking with either Hall or Reed, as I recollect, but saw him talking to Burckhardt frequently.

Q. Did Mayo manifest any astonishment at your resigning, and did he urge you to hold on to your position?—A. He did not.

He was forced to resign. Ferguson, another of the registrars, received the following letter from this same Senator Reed, who had offered the bribe to Mayo, which is as follows:

HUNTSVILLE, MO., *October 19, 1868.*

DEAR SIR: On last Wednesday I was applied to to sue you for your action as a member of the board of registration. I refused; because at Mount Airy I promised you that I would hold you harmless in legal prosecutions contemplated against the other members of the board, if you would not resign. To this promise I will adhere.

I will not bring a suit against you for anything you have done as a member of the board of registration. But, for anything you may hereafter do, you must take the consequences.

If persons apply to me to bring suits for any act of yours, as a member of the board of review, I will unhesitatingly bring their suits.

I hoped to have seen you this morning; but, being compelled to be absent, I communicate these facts by letter.

Your friend,

THOS. B. REED.

W. I. FERGUSON, Esq.



Thus, by interference, intimidation, and threats, was the entire board of registration in this county changed:

In Howard County each member of the board first appointed was removed, and three democrats appointed in their stead. So it will be observed that the superintendent not only kept his promise to Reed, that he would appoint "*good men*" to register, but went so far as to accede entirely to his suggestion to appoint democrats to office. It further appears that the faithfulness with which Mayo labored in the interest of Reed and his party met with their most hearty approval. (See democratic mass meeting, p. 155.)

On the 26th of October, 1868, a very few days before the election, the democratic party of Randolph County indorsed, by resolution, the conduct of the superintendent, Mayo, and pledged him their support. The committee that framed and reported this resolution of indorsement was composed of fourteen persons—five of whom had been in actual service against the government during the rebellion, and one of whom (Arthur Terrell) was wounded in the effort to tear up and destroy the North Missouri railroad in 1861. (See evidence of A. F. Denry, p. 154.) Why this sudden indorsement of a radical superintendent? What was it for, if not that he had acceded to the demand of Reed and his party? Mayo was present himself at this meeting. The majority of the election committee says that Mayo was an independent candidate; had his name placed on the democratic ticket and paid for it, and offered to do the same with the republicans, but was refused. This conduct and refusal of those with whom he had acted, and still claims to act, politically, is the best evidence in the world that he had betrayed the confidence reposed in him by them. They would not permit his name on their ticket. As it turned out, there were but very few of that party in the county, but, few as they were, they could not be induced to place the name of a man upon their ticket who, while professing friendship, plotted and corruptly bargained with their enemies.

The majority of the committee says that the testimony is too indefinite to establish the fact that there were but from four to six hundred qualified voters in Monroe County, and that such testimony "is really a charge of perjury against a thousand persons in Monroe County." One witness, Captain Henry Fields, (p. 144,) swears that he examined the list of voters for 1868, and that the names of fifty persons appeared upon the qualified list of voters whom he himself had seen in arms against the government; and when asked to designate them by name, he, as did a dozen other Union men examined by the sitting member, declined to give their names, for the reason that "it was not safe and would subject him to trouble and difficulty." The evidence discloses a sad state of affairs in Monroe County. Nearly all the witnesses examined by the sitting member, with singular unanimity, say that it was unsafe to go before the board and make objections to persons registering as voters.

Springsteen himself testifies (p. 135) as follows:

Q. What was the sentiment of the people of this county, in your opinion, during the last election, toward a man who would voluntarily come forward to the board of registration and give information?—A. Well, I think they would be pretty mad at him if he had come forward voluntarily and done it. I think a good many would, at least.

Q. Don't you think a man who would voluntarily come forward and give information against men who were applying for registration—don't you think it amounted almost to an exclusion from business and society here in this country?—A. Well, I think a great many men who would have been objected to probably would have declined having any business transaction with him.

Q. Is not that, in your opinion, the reason and cause why objections were not urged



to men who applied for registration?—A. Well, I don't know; I never formed much of an opinion about it. I expect that kept a great many from it.

Q. Was not the entire sentiment of the county, almost, against a man coming forward and voluntarily giving information to the registering officers?—A. In our township I know it raised considerable of a stir there, but there were no threats of violence or anything of the kind used, that I heard. Persons, when they were objected to, would come forward and want to know why they had been objected to, and so on, and would appear to be pretty mad because they had been objected to.

Q. Then in that township was the only place in the county where any objection was raised to any set of men registering, voluntarily, by the people?—A. That is the only one, I believe, sir; that is, while the board of registration was in session. Before the board of review there were some others.

This shows that the pressure was so great that *persons* could not, with safety, *voluntarily* give evidence, and the board refused and neglected to issue *compulsory* process to compel the attendance of a *single witness*, and yet a majority of the committee have concluded that “the evidence does not seem to sustain the claim that Union men could not have safely objected to the registration.” For my own part, I cannot imagine evidence more conclusive. The majority also attempts to account for the astonishingly large vote of Monroe County in 1868 by saying that it may have occurred from the fact that, in 1866, all persons who applied for registration and were refused for any reason were, by law, put upon the rejected list, while in 1868 no one could be put on the rejected list unless he had taken and subscribed the oath of loyalty, &c. There is not a particle of testimony in the whole record which shows that the oath was not taken by all who applied in 1866. Yet, according to the report of the committee, no one could be put on the rejected list in 1868, unless he had *first taken* and subscribed the oath of loyalty, and the majority of the committee admits that there were more than *four hundred names* on the rejected list in 1868 of persons who *admitted* their disqualification, but yet *took the oath of loyalty, or otherwise their names could not have been on the rejected list*.

The majority say that if the evidence taken is relied upon to reject the vote of Monroe County the committee must believe that a thousand persons took the oath falsely. Here are more than *four hundred* who took the oath, and *on their own motion* placed upon the rejected list, who admit that their sworn statement was not true. The increase in the vote can be more easily and much more satisfactorily accounted for: 1st. The board in 1866 refused to register rebels. 2d. The board in 1868 consented to their registration. This is doubtless the true explanation of the whole subject, and it is quite unnecessary to hunt up different and additional reasons. The people of Monroe County took the oath of loyalty for the same reason given by the contestant in his notice, “that the oath was unconstitutional and void.” This furnishes the only *charitable excuse* for the singular conduct and remarkable disregard of law at the election in 1868. The majority of the committee says that better evidence was in the reach of the sitting member. The evidence shows that the sitting member attempted to purge the poll by showing acts of disqualification against each separate voter, although he was not able to procure witnesses in all cases who would endanger their lives and their business by naming any particular individual, yet one witness states that the names of fifty persons appeared upon the list of qualified voters for 1868, whom he had seen under arms himself. Failing in this the committee says that it would have been perfectly competent for the sitting member to have introduced the disqualified voters themselves as witnesses. In plain words, the committee says that the perjurer should have been put on the stand to prove his own guilt. The law is well settled that you cannot compel a witness to



criminate himself, and the sitting member could not compel a single voter to convict himself of perjury, and it is respectfully submitted that no greater absurdity could have been committed by the sitting member than to have attempted to introduce as witnesses the parties themselves to *disprove* what they had solemnly sworn and subscribed, and because this was not done, the majority of the committee says that the sitting member has no right to ask the House to reject their votes upon secondary evidence. The evidence is the best that was in the reach of the sitting member, and the law does not require him to do *impossible things*. The majority of the committee states that there were but 1,246 who applied for registration in 1866, and that but 429 were accepted as qualified voters, and in 1868 more than 2,100 applied for registration, 1,652 of whom were accepted as qualified, and the remainder, at their own instance and request, placed upon the list of rejected voters. Of this number, 1,652, it is admitted that 408 of them were rejected by the board in 1866, and there is no evidence whatever going to show that the causes of their disqualification were removed before 1868. The record shows that 800 more persons applied for registration in 1868 than did in 1866, and that the board in 1868 registered over four hundred more than even applied for registration in 1866. It seems to me clear that the law was not respected, enforced, or obeyed in Monroe County in 1868, and it would be an act of injustice and wrong, in my opinion, to recognize the vote therein cast. *It ought not to be counted.* Not only the legislature of the State, but the governor refused to recognize the vote of Monroe County cast in 1868 for judge and circuit attorney, and commissioned William P. Harrison as judge and M. L. Hallister as circuit attorney, instead of David H. Moss as judge and W. W. Boulware circuit attorney, whom the vote returned by the county clerk showed to be elected.

It is claimed, however, that the governor commissioned the county officers. This is true; but it was under a statute requiring the clerk to certify directly to the governor, instead of to the secretary of state, where the evidence of the violation of the law was on file. This was done before the action of the legislature in reference to the vote of Monroe County was had. It is not necessary to discuss the power or authority of the secretary of state to reject the vote, because it is admitted by the majority of the committee that this question does not enter into the case. But it appears from a letter of the secretary of state, filed by the contestant himself as evidence, (p. 62 of the record,) that the secretary of state awaited the action of the people's representatives in the legislature before he refused to open and cast up the vote of Monroe County, (p. 61:)

The letter from Colonel Switzler is received. I have left the whole matter of Monroe and other counties to the legislature for decision. I have not thrown out any county, but simply refuse to cast up until the legislature decides that I shall do so. Not until the legislature has acted upon this matter can I give out copies of documents relating to this subject.

Respectfully,

FRANCIS RODMAN,  
*Secretary of State.*

It cannot well be denied that if the case of Switzler *vs.* Anderson, in the fortieth Congress, was correctly decided, then the conclusions of the majority of the committee in this case are wrong. The same contestant was here in that case claiming admission on the ground of the rejection of the vote in Calloway County for reasons similar to those now urged for the rejection of Monroe County in 1868.



Every point arising in that case in regard to the vote in Calloway County arises in this case in regard to Monroe County. After a lengthy consideration and exhaustive debate, the House rejected the Calloway County vote and retained Mr. Anderson in his seat. In the face of that decision it seems to me it would hardly be respectful in your committee to ignore the action of the House, and attempt to reverse its decision. If the committee be a court, it must be remembered that it is only an inferior court, and that the House is at last the high court of appeals. Surely the case should be regarded as *res adjudicata*.

But while I insist that every reason which existed for the rejection of Calloway County then exists for the rejection of Monroe County now, I maintain that there is a strong and well-established reason for exclusion in the present which did not arise in the former case. It is a reason, too, which, I feel confident, would have secured a different report from the committee and largely increased the majority in the House. I refer to the evidence of corruption—the bargain and sale between Reed and other democrats on the one side, and Mayo, the superintendent of registration, on the other. It was a skillfully-planned contract, fully executed, and kept in all its parts on both sides. Had no such bargain been made, I feel very certain that this contest would never have arisen. Mayo seems to be serving as sheriff of Randolph County and enjoying the price of his treachery. Some of those who paid him seem to think that they should have their compensation in return. I do not wish to charge upon the contestant any participation in this bargain, as it seems to have been made by other persons.

It is not my province to discuss the evidence in the case decided in the last Congress, but the fraudulent character of the vote in Calloway County is fully shown by the subsequent registration in that county in 1868. The registration of 1866 contained more than 1,800 names of persons marked as qualified voters, while in 1868 there were less than 600. The contestant, in one of his grounds of contest, charged that a large number of persons were rejected by the board who were qualified voters, and who would have voted for him, if permitted to vote at all, but there is not a word of evidence in the whole record going to show that such registration was in the slightest degree erroneous. The action of the board must then be taken as true, and furnishing the only evidence in the case of the number of qualified voters in the county. In the Switzler vs. Anderson contest in the fortieth Congress, the fairness and correctness of the registration in Monroe County in 1866 were not denied by the contestant, and he can hardly be permitted to dispute its correctness now.

#### AUDRAIN COUNTY.

The majority of the committee in their report reject the vote of Salt River and Wilson Townships as returned by the county clerk to the secretary of state. In this we agree: at Salt River Township there seems to have been two polls opened, when the law only authorized one. The one that we agree to reject entirely shows upon its face the most conclusive and indisputable evidence of fraud. The law of the State required the board of registration in each county to appoint three judges of election in each precinct. This was done by the board in Salt River Township, and it is in evidence that such judges applied repeatedly on the day before the election to the sheriff of the county for the ballot-box and poll-book, and were as often refused. On the morning of the election it was ascertained that the place designated by the county court for holding the election could not be had. The sheriff of the county at



7.15 a. m. delivered the ballot-box, poll-book, &c., to persons other than the judges appointed by the board of registration, and under their auspices the poll of that precinct was returned. They returned 146 votes for the contestant and 71 for the sitting member. The judges appointed under the law, about the same time, or shortly after, in the morning, opened the polls at a different place, and continued to receive the votes until about 11 o'clock, when they were assaulted and driven away by an armed mob. The evidence shows most conclusively that this assault was premeditated by the sheriff of the county, who, it appears, was a candidate for re-election on what was known by name as the "democratic ticket." It also appears that, on the night before the election, he organized a company of men, and armed them with guns and pistols. These guns were secreted in a back room of his office, where from two to three men were kept constantly on guard during the night before and the day of election.

The refusal upon his part to deliver the poll-books, ballot box, &c., to the judges appointed by the board of registration, was a part and parcel of the plan to defeat the legal and registered voters of the county. The plan was successful, and he obtained the certificate of election. I am clearly of the opinion that the vote cast at the precinct on the west side of the public square before the assault upon and interruption of it, is legal and should be counted. It appears from this return that the contestant received seven votes and the sitting member received seventy-three votes of the number cast.

#### WILSON TOWNSHIP.

The vote of Wilson Township should be rejected for the reasons stated in the majority report, and the vote of Jasper Township, in Ralls County, should be added.

#### CALUMET TOWNSHIP, PIKE COUNTY.

The only township remaining to be examined is that of Calumet, in Pike County. The constitution of the State of Missouri, in the third section of second article, disqualifies from voting any person who has ever, with a view to avoid enrollment of the militia of this State, or to escape the performance of duty therein, or for any other purpose, enrolled himself, or authorized himself to be enrolled, by or before any officer as disloyal or as a southern sympathizer, or in any other terms indicating his disaffection to the government of the United States in its contest with rebellion, or his sympathy with those engaged in such rebellion.

The evidence in the case shows that in 1862 John J. McElwee made an enrollment of all white male citizens residing in that township. His testimony will be found at page 89 of the record, and is as follows:

JOHN J. McELWEE, of lawful age, being produced, examined, and duly sworn, deposed and saith as follows:

Question. Where do you reside, and what is your business?—Answer. Louisiana, Missouri; my business is that of a druggist.

Q. Where were you residing in 1862?—A. In Clarksville, Calumet Township, Pike County, Missouri.

Q. Were you appointed in 1862 to make an enrollment of the loyal and disloyal citizens of that township?—A. I was.

Q. Did you make a thorough and complete enrollment?—A. As near as possible. I do not suppose I missed many persons.

Q. State how you made the enrollment.—A. In the first place I gave notice in writing to the citizens of the township that I would be in Paynesville, Prairieville, and



Crow's Cross-Roads on certain days specified in said notices. I went to the places as above enumerated at the times stated in the notices. All persons who failed to meet me at these places I sent for, and caused them to either come or send their names, with the manner in which they desired, to be enrolled. And by pursuing this course I don't think there were more than a dozen in the township who were not enrolled one way or the other.

Q. State whether the names of the persons enrolled by you were placed upon the one list or the other, as they directed or desired.—A. They were so placed upon the list by direction of the parties themselves. I placed no man's name upon either the loyal or disloyal list without he desired it and so directed me.

Q. Do you recognize the list here (marked Exhibit A) as being the list made by you of the persons who enrolled themselves loyal to the government?—A. I recognize the list as being the same made by me in August, 1862. The names appearing upon the list were placed there by direction of the parties themselves.

Q. Did you make a list of disloyal persons?—A. I did at the same time I made the other.

Q. Where is that list now?—A. I have never seen the list since it was made.

Q. What did you do with that list?—A. I gave it to William Gray.

Q. Have you tried to obtain that list?—A. I did try to get it from Dr. Cary Bankhead, who I understood had it in his possession.

Q. How long have you lived in Missouri?—A. I was born and raised in Pike County, Missouri; and am thirty-three years of age.

Q. What ticket did you vote at the last general election?—A. I voted the straight democratic ticket, including William F. Switzler for Congress.

And further deponent saith not.

The whole number of names appearing upon the qualified list is 226\* (See page 163.)

Dr. Cary R. Bankhead was then sworn, and his testimony is as follows:

Question. Where do you reside, and what is your occupation?—Answer. I reside in Paynesville, Calumet Township, Pike County, Missouri; and am a practicing physician.

Q. How long have you lived in Pike County, Missouri, and at Paynesville?—A. For more than twenty-five years in the county, and at Paynesville for twelve years.

Q. Are you well acquainted with the people in Calumet Township?—A. I am well acquainted in the western and southern portions of the township; I think I know every man, woman, and child in that portion of the township.

Q. Has the population increased or diminished in the last six or eight years?—A. It has increased some, in about the same proportion as in other parts of the county. There has been no great influx of population to that portion of the county.

Q. Did you have in your possession at any time what purported to be the disloyal enrollment of Calumet Township, as made by John J. McElwee in 1862; and if so, what has become of that enrollment?—A. I did have in my possession until recently such list; but it has been lost, misplaced, or destroyed by some one.

Q. It is not in your power to produce such list now?—A. It is not.

And further the deponent saith not.

It seems that the list containing the evidence of the disloyal enrollment had been lost, mislaid, or destroyed. Had this list been found, there would have been no trouble in purging the poll; but that being lost, and as Mr. McElwee could not recollect the names and number of the enrollment, there was no evidence except that of the parties themselves; and, as has been seen before, the sitting member could not compel persons to convict themselves. There seems to have been but little increase in this township in population, yet at the election in 1868 there were cast in this township 609 votes—an increase of nearly three to one over the loyal enrollment. I am of the opinion that this vote was fraudulent, and should not be counted. The list of "disloyal" in this district was mislaid or destroyed, so that the officers of registration could not use it. In view of all the facts in the case, I have concluded as follows: 1. That the entire vote of Monroe County should be rejected. 2. That the returns from Salt River Township, in Audrain County, should be rejected, and that the vote returned by the judges appointed by the board of registration should be counted. 3. That the poll of Wilson Township should be rejected. 4. That the vote of Jasper Township, in



Ralls County, should be added. 5. The vote of Calumet Township should be rejected.

The vote would then be as follows :

Counties.	Switzler.	Dyer.
Audrain.....	98	264
Boone.....	195	153
Callaway.....	343	162
Lincoln.....	397	458
Montgomery.....	492	695
Monroe.....		
Pike.....	1, 178	881
Ralls.....	214	303
St. Charles.....	1, 091	1, 551
Warren.....	377	829
Total.....	4, 385	5, 296 4, 385
Dyer's majority.....		911

I therefore recommend the adoption of the following resolution :

*Resolved*, That David P. Dyer is entitled to the seat he now holds as representative from the ninth congressional district of Missouri.

JOHN CESSNA.

### JOSEPH SEGAR.

The State of Virginia claimed an additional Representative in Congress by virtue of the fact that certain ordinances of the Virginia constitution, recently adopted, provided for an additional Representative, Congress approving the same.

It was held that the ordinances were never adopted by the people, and that had such been the fact it would not have given validity to the claim. Also, that the admission of Virginia under its new constitution gave no legality to the election of an additional member.

The report was adopted (July 11) *nem. con.*

March 29, 1870.—Mr. Paine, from the Committee of Elections, made the following report :

*The Committee of Elections, to which were referred the credentials of Joseph Segar, claiming a seat in this House as a Representative of the State of Virginia at large in the Forty-first Congress, submit the following report :*

The credentials of the claimant are in the following form :

*To all whom it may concern :*

This is to certify, that at an election held in and for the State of Virginia, by the voters registered under the act of Congress of March 2, 1867, entitled "An act to provide for the more efficient government of the rebel States," and the act supplementary thereto, and amendatory thereof, upon the question of ratifying or rejecting the constitution framed by the convention called under the authority of said laws, and at which election it was provided by the 2d section of the law of April 10, 1869, that the voters of said State may vote for and elect members of the general assembly of said State, and all the officers of said State provided for by the said constitution, and members of Congress, Joseph Segar was duly elected at large as a Representative to the Congress of the United States.

Given under my hand, at Richmond, Virginia, this 9th day of September, 1869.

ED. R. S. CANBY,

*Brevet Major General U. S. A., Commanding First Military District.*



The census act of May 23, 1850, contains the following provision :

SEC. 24. *And be it further enacted*, That from and after the third day of March, one thousand eight hundred and fifty-three, the House of Representatives shall be composed of two hundred and thirty-three members, to be apportioned among the several States in the manner directed in the next section of this act.

And by the 25th and 26th sections of the same act it is provided that, upon the completion of each enumeration of the inhabitants of the United States, the Secretary of the Interior, after ascertaining from the census returns the representative population of the United States, and of the several States, shall apportion the representatives among the several States, and "shall, as soon as practicable, make out and transmit, under the seal of his office, to the House of Representatives, a certificate of the number of members apportioned to each State under the then last enumeration." Under this act the census of 1860 was taken, and the Secretary of the Interior transmitted his certificate to the House in the following words :

DEPARTMENT OF THE INTERIOR, *Washington.*

I, Caleb B. Smith, Secretary of the Interior, do hereby certify that in discharge of the duty devolved on me by the provisions of an act of Congress approved May 23, 1850, entitled "An act providing for the taking of the seventh and subsequent censuses of the United States, and to fix the number of the members of the House of Representatives, and provide for their future apportionment among the several States," I have apportioned the Representatives for the thirty-eighth Congress among the several States, as provided for by said act, in the manner directed by the 25th section thereof.

And I do hereby further certify that the following is a correct statement of the number of Representatives apportioned to each State under the last (or eighth) enumeration of the population of the United States, taken in accordance with the act approved May 23, 1850, above referred to, namely :

To the State of Alabama, six .....	6
To the State of Arkansas, three .....	3
To the State of California, three .....	3
To the State of Connecticut, four .....	4
To the State of Delaware, one .....	1
To the State of Florida, one .....	1
To the State of Georgia, seven .....	7
To the State of Illinois, thirteen .....	13
To the State of Indiana, eleven .....	11
To the State of Iowa, five .....	5
To the State of Kansas, one .....	1
To the State of Kentucky, eight .....	8
To the State of Louisiana, five .....	5
To the State of Maine, five .....	5
To the State of Maryland, five .....	5
To the State of Massachusetts, ten .....	10
To the State of Michigan, six .....	6
To the State of Minnesota, one .....	1
To the State of Mississippi, five .....	5
To the State of Missouri, nine .....	9
To the State of New Hampshire, three .....	3
To the State of New Jersey, five .....	5
To the State of New York, thirty-one .....	31
To the State of North Carolina, seven .....	7
To the State of Ohio, eighteen .....	18
To the State of Oregon, one .....	1
To the State of Pennsylvania, twenty-three .....	33
To the State of Rhode Island, one .....	1
To the State of South Carolina, four .....	4
To the State of Tennessee, eight .....	8
To the State of Texas, four .....	4
To the State of Vermont, two .....	2
To the State of Virginia, eleven .....	11
To the State of Wisconsin, six .....	6

The aggregate being 233 Representatives.

In testimony whereof I have hereunto subscribed my name and caused the seal of



the Department of the Interior to be affixed, this fifth day of July, in the year of our Lord one thousand eight hundred and sixty-one, and of the independence of the United States of America the eighty-sixth.

CALEB B. SMITH.

*The SPEAKER of the House of Representatives of the United States.*

In 1862 the number of Representatives was increased by law as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the third day of March, eighteen hundred and sixty-three, the number of members of the House of Representatives of the Congress of the United States shall be two hundred and forty-one; and the eight additional members shall be assigned one each to Pennsylvania, Ohio, Kentucky, Illinois, Iowa, Minnesota, Vermont, and Rhode Island.*

Approved March 4, 1862.

In the same year the following act was passed:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in each State entitled in the next and any succeeding Congress to more than one Representative, the number to which such State is or may be hereafter entitled shall be elected by districts composed of contiguous territory, equal in number to the number of Representatives to which said State may be entitled in the Congress for which said election is held, no one district electing more than one Representative: Provided, That the provisions of this act shall not apply to the State of California so far as it may affect the election of Representatives to the thirty-eighth Congress: And provided further, That in the election of Representatives to the thirty-eighth Congress from the State of Illinois the additional Representative allowed to said State by an act entitled "An act fixing the number of the House of Representatives from and after the third day of March, eighteen hundred and sixty-three, approved March fourth, eighteen hundred and sixty-two," may be elected by the State at large, and the other thirteen Representatives to which the State is entitled by the districts as now prescribed by law in said State, unless the legislature of said State should otherwise provide before the time fixed by law for the election of Representatives therein.*

Approved July 14, 1862.

On the 31st day of December, 1862, an act was passed providing for the admission of the new State of West Virginia, to consist of forty-eight counties of Virginia, and to have, until the next general census, three representatives in the House of Representatives of the United States, which act was, by its own terms, to take effect at the expiration of sixty days from the date of a proclamation of the President therein provided for. The proclamation was duly issued on the 20th day of April, 1863, in the following words:

*By the President of the United States of America.*

#### A PROCLAMATION.

Whereas by the act of Congress approved the 31st day of December last, the State of West Virginia was declared to be one of the United States of America, and was admitted into the Union on an equal footing with the original States in all respects whatever, upon the condition that certain changes should be duly made in the proposed constitution for that State; and

Whereas, proof of a compliance with that condition, as required by the second section of the act aforesaid, has been submitted to me:

Now, therefore, be it known, that I, Abraham Lincoln, President of the United States, do hereby, in pursuance of the act of Congress aforesaid, declare and proclaim that the said act shall take effect and be in force from and after sixty days from the date hereof.

In witness whereof I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington this twentieth day of April, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States the eighty-seventh.

[SEAL.]

ABRAHAM LINCOLN.

By the President:

WILLIAM H. SEWARD,  
*Secretary of State.*



Subsequently the following joint resolution was adopted:

*Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress hereby recognizes the transfer of the counties of Berkeley and Jefferson from the State of Virginia to West Virginia, and consents thereto.*  
Approved March 10, 1866.

The returns of the census of 1860 show that the representative population of the present State of Virginia was a little less than eight-eleveths of the entire representative population of the old State, including the counties now constituting West Virginia. While, however, the representative population of the counties constituting the present State of Virginia was not quite sufficient to entitle the State to eight of the eleven representatives apportioned to the old State, it was considerably more than sufficient to entitle it to seven of them, so that the assignment of eight to Virginia and three to West Virginia was the nearest practicable approach to an absolutely just distribution of the representation.

In no case have the acts providing for the readmission of the rebel States to the Union embraced any legislation changing or fixing the number of representatives of the readmitted State. In every case the State has been readmitted with the number of representatives fixed by the certificate of the Secretary of the Interior transmitted to the House under date of July 5, 1861.

The number of representatives assigned to the old State of Virginia by the apportionment of 1861 was, as has been already stated, eleven. The number assigned to West Virginia by the act of admission was three. In the opinion of the committee, the present State of Virginia is by law entitled to only eight representatives, and the law requires that those shall be chosen by single districts.

It is due to the claimant that the grounds upon which he bases his claim to the seat should be fully and fairly considered.

1. He cites the last clause of section 5 of the act of March 23, 1867, which is in these words:

And if the said constitution shall be declared by Congress to be in conformity with the provisions of the act to which this is supplementary, and the other provisions of said act shall have been complied with, and the said constitution shall be approved by Congress, the State shall be declared entitled to representation, and senators and representatives shall be admitted therefrom as therein provided.

And he alleges that the true meaning of the words "senators and representatives shall be admitted therefrom as *therein* provided" is that senators and representatives shall be admitted from those States as provided in *their constitutions*. But the word "therein" obviously refers to the *act* previously mentioned, which was the act of March 2, 1867, and did provide for admitting senators and representatives, and not to the State "constitutions," which could by no possibility embrace any valid provisions for the *admission* of senators and representatives, whatever provisions they might contain for their *election*. And then the truth is that the constitution of Virginia not only does not "provide" for the "admission" of senators and representatives, but does not even provide for their *election*. The only provision on the subject contained in that instrument will be found in section 12 of article 5, in these words:

SEC. 12. The whole number of members to which the State may at any time be entitled in the House of Representatives of the United States shall be apportioned, as nearly as may be, among the several counties, cities, and towns of the State, according to their population.

It is claimed, however, that certain ordinances of the constitutional convention did provide for a ninth representative, to be elected by the State at large, and that these ordinance are, to all intents and purposes,



a part of the constitution itself. The following are the ordinances referred to:

SECTION 1. *Be it ordained by the people of Virginia in convention assembled*, That the constitution adopted by this convention be submitted for ratification on Tuesday, the 2d day of June, 1868, to the voters of this State, registered and qualified in compliance with the acts of Congress known as the reconstruction act. The vote on said constitution shall be "for the constitution" or "against the constitution." The said election shall be held at the same places where the election for delegates to this convention was held, and under the regulations to be prescribed by the commanding general of this military district, and the returns made to him as directed by law.

SEC. 2. An election shall be held at the same time and places for members of the general assembly, and for all State officers to be elected by the people under this constitution; the said election for State officers shall be conducted under the same regulations as the election for the ratification of the constitution, and by the same persons. The returns of this election shall be made in duplicate—one copy to the commanding general and one copy to the president of this convention, who shall give certificates of election to the persons elected. The officers elected shall enter upon the duties of the offices for which they are chosen as soon as elected and qualified, in compliance with the provisions of this constitution, and shall hold their respective offices for the term of years prescribed by the constitution, counting from the 1st day of January next, and until their successors are elected and qualified.

SEC. 3. An election for members of the United States Congress shall be held in the congressional districts as established by this convention, one member of Congress being elected in the State at large at the same time and places as the election for State officers; said election to be conducted by the same persons and under the same regulations before mentioned in this ordinance; the returns to be made in the same manner provided for State officers.

SEC. 4. The general assembly elected under this ordinance shall assemble at the capital, in the city of Richmond, on Wednesday, the 24th day of June, 1868.

SEC. 5. The commanding general is requested to enforce this ordinance.

*Be it ordained by the people of Virginia in convention assembled*, That the following named counties shall compose the respective congressional districts:

The counties of Accomac, Northampton, Northumberland, Richmond, Westmoreland, Essex, Lancaster, Middlesex, King and Queen, King William, Gloucester, Matthews, York, James City, city of Williamsburg, Elizabeth City, Warwick, King George, and Caroline, with a population of 151,295, shall form the first congressional district.

The counties of Princess Anne, Norfolk City, Norfolk County, city of Portsmouth, Nansemond, Southampton, Greensville, Sussex, Surry, Dinwiddie, city of Petersburg, Prince George, Isle of Wight, and Nottoway, with a population of 150,584, shall form the second congressional district.

The counties of Charles City, Henrico, city of Richmond, Hanover, Chesterfield, Goochland, Powhatan, Amelia, Cumberland, and New Kent, with a population of 149,021, shall form the third congressional district.

The counties of Brunswick, Mecklenburg, Lunenburg, Charlotte, Halifax, Pittsylvania, Franklin, Patrick, and Henry, with a population of 160,730, shall form the fourth congressional district.

The counties of Greene, Albemarle, Fluvanna, Nelson, Buckingham, Amherst, Appomattox, Bedford, Campbell, Prince Edward, and the city of Lynchburg, with a population of 155,490, shall form the fifth congressional district.

The counties of Frederick, city of Winchester, Clarke, Warren, Page, Shenandoah, Rockingham, Augusta, town of Staunton, Highland, Bath, Botetourt, Alleghany, and Rockbridge, with a population of 146,824, shall form the sixth congressional district.

The counties of Alexandria, Fairfax, Prince William, Fauquier, Stafford, Rappahannock, Culpeper, Spottsylvania, town of Fredericksburg, Orange, Louisa, Loudoun, and Madison, with a population of 153,295, shall form the seventh congressional district.

The counties of Montgomery, Giles, Pulaski, Wythe, Bland, Tazewell, Smyth, Washington, Russel, Scott, Lee, Wise, Buchanan, Grayson, Carroll, Floyd, Craig, and Roanoke, with a population of 147,679, shall form the eighth congressional district.

And there shall be one member of Congress elected by the State at large.

This ordinance shall be in force from its passage, and may be altered or repealed by the legislature.

But neither of these ordinances was ever submitted to or ratified by the people of Virginia as a part of the constitution. On the contrary, by the last section of the first "the commanding general is requested to enforce this ordinance," and by the last clause of the second it is ordained that "this ordinance shall be in full force from its passage, and may be altered or repealed by the legislature." Nor is it possible to



overlook the suggestive fact that this convention, instead of dividing the State into nine congressional districts, prudently divided it into eight, and provided that the ninth representative should be chosen by the State at large.

2. The claimant alleges that, inasmuch as the last section of the act of April 10, 1869, provides "that the proceedings in any of said States shall not be deemed final, or operate as a complete restoration thereof, until their action, respectively, shall be approved by Congress," the subsequent admission of Virginia was a virtual approval of all the "action" of that State, including the provision by ordinance for, and the election by the people of, a ninth representative of the State at large. But, in the first place, he thus construes the clause cited to be a declaration that the State of Virginia should not be restored to the Union by Congress until all the action of the State should be approved by Congress, whereas the actual provision was that the "proceedings in" Virginia should not, of themselves, restore the State until such approval by Congress. In the next place, this reasoning assumes that if Congress had, in April, 1869, declared (as it did not in fact) that Virginia should not be restored by Congress without an approval by Congress of all the "action" of Virginia, then Congress could not, in January, 1870, have admitted Virginia without an approval of all the "action" of the State, whereas in fact the law of January 26, 1870, by which Virginia was admitted, does not itself, expressly or by implication, approve the provision for a representative of the State at large.

3. The claimant cites the following provision of the act which took effect on the 11th day of March, 1868:

SEC. 2. *And be it further enacted*, That the constitutional convention of any of the States mentioned in the acts to which this is amendatory may provide that, at the time of voting upon the ratification of the constitution, the registered voters may vote also for members of the House of Representatives of the United States, and for all elective officers provided for by the said constitution; and the same election officers who shall make the return of the votes cast on the ratification or rejection of the constitution shall enumerate and certify the votes cast for members of Congress.

And he insists that the authority conferred by this act carries with it the power, first, to district the State, and, secondly, to fix the number of its representatives; and that these two powers stand on the same footing. But the power to district a State, in accordance with the Federal apportionment, is, by section 4 of article 1 of the Constitution of the United States, conferred upon the State, subject to the control of Congress, whereas the power to fix or alter the number of members of the House of Representatives of the United States is vested exclusively in the Federal Government, and even if there is doubt whether a State *can* exercise the power to district its territory for the election of representatives otherwise than through its ordinary legislature, there is no doubt that a State *can not* exercise the power to fix the size of the Federal House of Representatives, whether through its ordinary legislature, or its constitutional convention, or in any other way.

4. The claimant also alleges that he ought to be admitted because the House of Representatives agreed to a bill on the 9th day of July, 1868, and to another on the 9th day of December, 1868, authorizing the people of Virginia to elect a ninth representative at large, and because the Judiciary Committee of the Senate reported favorably on the latter bill. This argument would certainly be unanswerable if either of these bills had ever become a law, for then the people of Virginia would have been warranted in choosing a ninth representative at the election subsequently held on the 5th day of July, 1869. But neither of these bills ever became a law. On the contrary, this provision for a ninth repre-



sentative was ultimately defeated, and the action of Congress culminated in the law of April 10, 1869, which contained no such provision. In all this the committee find no element of strength for the plaintiff's case. On the other hand, the consideration and final rejection of this proposition would seem to leave the claimant's case weaker than it would have been if no such bills had been introduced at all.

5. Another ground of the claim to this seat is this: That "the Virginia convention, in executing the order of Congress to frame a constitution, had the authority to do all proper acts required to make it effectual and complete," and was, therefore, warranted in making the provision for a ninth representative in Congress. This involves a singular confusion of ideas. In the first place, the convention could not *ratify* this constitution, and so of course could not make it effectual and complete. In the next place, the United States made minute provision for the details of the registration and election, and expressly indicated, in section 8 of the act of March 23, 1867, and in section 2 of the act of March 11, 1868, the subjects on which the convention might by ordinance legislate. And finally, the provision for a ninth representative in Congress has nothing whatever to do with making the constitution effectual and complete.

6. Another argument of the claimant is, that Virginia is entitled to the same number of representatives to which her aggregate population, including all the slaves, as shown by the census of 1860, would entitle her, if this were her original admission into the Union. If this were true, it might be a good reason for asking Congress to enact a law giving Virginia nine representatives, but could by no possibility be a reason for asking this House to admit nine representatives without a law of Congress to authorize it.

But is it true that Virginia can justly claim that a law shall be enacted to give her *at once*, as the result of her secession from and readmission to the Union, that increase of representation for which the other States, loyal and disloyal, slave and free, must wait until the apportionment under the next census? If Virginia is entitled to immediate representation of the two-fifths of her colored population recently added to her basis of representation by the fourteenth article of the amendments to the Constitution of the United States, without awaiting the next census, so also is each of the other late rebel States; and the case of most of them is much stronger than hers, because their proportion of blacks is much greater. If Virginia is entitled to such increase now, so also are Maryland, Delaware, Kentucky, and Missouri, unless Virginia is to have this distinction because she rebelled, seceded, and was readmitted, and they did not. If Virginia is entitled to this increase now, and Iowa and the other free States must await the next enumeration and apportionment, it must be for one or more of three reasons: first, that the increment to the basis of representation of Virginia has resulted from a constitutional amendment, while that of Iowa and the other States, always free, has resulted from actual increase of population; or, second, that the increment in Virginia is black, and that in Iowa and the other States white; or, third, that Virginia rebelled, and Iowa and the other States remained loyal. These reasons are all unsound. If such a law is passed now, it should be a general law, to enure to the benefit of all of the States.

7. Finally, the claimant thinks that the certificate of General Canby ought to be conclusive of his right to a seat, "unless in case of contest or of the allegation of fraud or of palpable clerical mistake."

This assumes, of course, that the seat itself is provided for by law.



But that is the very question and the only question in this case, and to that question the committee are constrained to give a negative answer.

The committee submit the following resolution:

*Resolved*, That Joseph Segar is not entitled to a seat as a representative of the State of Virginia at large in the forty-first Congress of the United States.

---

#### MINORITY REPORT.

April 12, 1870.—Mr. Stevenson, from the Committee of Elections, submitted the following as their views.

*The undersigned, members of the Committee of Elections, to whom were referred the credentials of Joseph Segar as Representative from the State of Virginia in the Forty-first Congress, submit the following minority report:*

#### THE APPORTIONMENT.

Under the apportionment of Representatives in Congress, on the census of 1860, the State of Virginia was entitled to *eleven* members. No law has been enacted affecting this apportionment, unless the reconstruction acts relative to that State can be so constructed.

The acts and proceedings creating and admitting the new State of West Virginia are silent on this question. They fix the number of representatives from the new State, but do not touch the topic of representation from Virginia.

It seems to be assumed that because the new State was formed from the side of the old, therefore the act of Congress giving West Virginia the right to three representatives reduced the quota of Virginia from eleven to eight; but we respectfully submit that no such important conclusion can be properly or safely implied from laws containing neither syllable nor letter to support it; and that such latitude of construction would overthrow all rights founded upon statutes.

If the apportionment on the census of 1860 applies at all, it must be accepted in its terms, and entitles the State of Virginia to her full quota of eleven representatives, instead of nine elected or eight admitted.

#### RECONSTRUCTION.

The case of Virginia was singular, and required special action; all other reconstructed States when readmitted had their boundaries unchanged, and were admitted to representation upon the old basis, and with the number of members assigned to each of them under the last apportionment; but the boundaries of Virginia had been changed, the congressional districts had been broken up, and it was therefore necessary to redistrict the State and proper to change the number of her representatives.

Here was a subject for adjustment by Congress with the assent of the State, or by the State with the consent of Congress.

The enabling reconstruction acts authorizing a convention to form a new constitution not proposing any change in the number of representatives, it was proper for that convention to propose such a measure, subject to approval, rejection, or modification by Congress.

The convention found the representative population largely increased, the number of electors nearly double, but instead of claiming eleven



representatives, it provided for the election of nine, eight by districts and one by the State at large.

This was done by ordinance, one for the election of officers, the third section of which is as follows.

SEC. 3. *An election for members of the United States Congress shall be held in the congressional districts as established by this convention, one member of Congress being elected in the State at large at the same time and places as the election for State officers; said election to be conducted by the same persons and under the same regulations before mentioned in this ordinance; the returns to be made in the same manner provided for State officers.*

The other redistricting the State, which is as follows:

*Be it ordained by the people of Virginia in convention assembled, That the following-named counties shall compose the respective congressional districts:*

The counties of Accomac, Northampton, Northumberland, Richmond, Westmoreland, Essex, Lancaster, Middlesex, King and Queen, King William, Gloucester, Matthews, York, James City, city of Williamsburg, Elizabeth City, Warwick, King George, and Caroline, with a population of 151,295, shall form the first congressional district.

The counties of Princess Anne, Norfolk City, Norfolk County, city of Portsmouth, Nansemond, Southampton, Greenville, Sussex, Surry, Dinwiddie, city of Petersburg, Prince George, Isle of Wight, and Nottoway, with a population of 150,584, shall form the second congressional district.

The counties of Charles City, Henrico, city of Richmond, Hanover, Chesterfield, Goochland, Powhatan, Amelia, Cumberland, and New Kent, with a population of 149,021, shall form the third congressional district.

The counties of Brunswick, Mecklenburg, Lunenburg, Charlotte, Halifax, Pittsylvania, Franklin, Patrick, and Henry, with a population of 160,730, shall form the fourth congressional district.

The counties of Greene, Albemarle, Fluvanna, Nelson, Buckingham, Amherst, Appomattox, Bedford, Campbell, Prince Edward, and the city of Lynchburg, with a population of 155,490, shall form the fifth congressional district.

The counties of Frederick, city of Winchester, Clarke, Warren, Page, Shenandoah, Rockingham, Augusta, town of Staunton, Highland, Bath, Botetourt, Alleghany, and Rockbridge, with a population of 146,824, shall form the sixth congressional district.

The counties of Alexandria, Fairfax, Prince William, Fauquier, Stafford, Rappahannock, Culpeper, Spottsylvania, town of Fredericksburg, Orange, Louisa, Loudoun, and Madison, with a population of 158,295, shall form the seventh congressional district.

The counties of Montgomery, Giles, Pulaski, Wythe, Bland, Tazewell, Smyth, Washington, Russell, Scott, Lee, Wise, Buchanan, Grayson, Carroll, Floyd, Craig, and Roanoke, with a population of 147,670, shall form the eighth congressional district.

*And there shall be one member of Congress elected by the State at large.*

This ordinance shall be in force from its passage, and may be altered or repealed by the legislature.

It will be seen that in each district there is a large surplus population, and after allowing a member at large, there remain over seventy-five thousand people unrepresented, more than half enough for another district. Before any election was held under the ordinances for the ratification or rejection of the constitution and for State officers and representatives, the proceedings were submitted to Congress for approval, modification, or rejection.

The ordinances providing for the election of nine members of Congress, one from the State at large, might have been modified. Had Congress objected to the number of members or to the election of a member at large, the number might have been reduced to eight, and the election at large forbidden, and the consent of the State to those terms made a condition precedent to admission; but no such action was taken or proposed in either House, while, on the contrary, two bills were passed by this House providing for the election of members according to the terms of the ordinances, expressly mentioning one at large. (See H. R. 1381, 40th Congress, 2d session, "An act providing for an election in Virginia," which passed the House July 9, 1868.)

SECTION 3. *And be it further enacted, That an election for members of the United States Congress shall be held in the congressional districts as established by said convention, one member of Congress being elected in the State at large, at the same time and places as the elec-*



tion for State officers; said election to be conducted by the same persons and under the same regulations before mentioned in this act; the returns to be made in the same manner provided for State officers.

This bill was not acted on by the Senate except by reference to committee, and at the third session of the Fortieth Congress, December 9, 1868, the House passed H. R. 1485, "An act providing for an election in Virginia," the 3d section of which was as follows:

SEC. 3. *And be it further enacted, That an election for members of the United States Congress shall be held in the congressional districts as established by said convention, one member of Congress being elected in the State at large, at the same time and places as the election for State officers; said election to be conducted by the same persons and under the same regulations before mentioned in this act; the returns to be made in the same manner provided for State officers.*

This section was explained in debate by Mr. Bingham, who represented the Committee on Reconstruction, from which the bill came. No objection was made to its provisions, and the bill passed the House without a division. (See *Globe*, vol. 71, pp. 31, 37.)

On February 18, 1869, it was reported back to the Senate from the Committee on the Judiciary, to whom it had been referred, unanimously recommending its passage with amendments not affecting the third section. No further action was had until the special message of the President and the passage of the act of April 10, 1869, which authorized the President to cause an election to be held for ratification or rejection of the new constitution of Virginia and the election of State officers and members of Congress, and provided that all proceedings should be subject to the approval of Congress.

While this act did not *expressly* authorize the election of *nine* members of Congress—one at large—yet, as it authorized the election of members without prescribing any change in the manner or the number provided for by the ordinances of the convention, and as they could not therefore be chosen in any other manner than that provided and not forbidden, the conclusion clearly follows that the act authorized the election of members according to the ordinances.

It was therefore proper that the President should have proceeded under this act as he did, by the general commanding, to order an election to be held for nine members of Congress, including one at large.

Here are extracts from the proclamation of General Orders under which that election was held:

[General Orders No. 61.]

HEADQUARTERS FIRST MILITARY DISTRICT, STATE OF VIRGINIA,  
*Richmond, Virginia, May 21, 1869.*

The President of the United States having designated Tuesday, the 6th day of July, 1869, for submitting the "constitution which was framed by the convention which met in Richmond, Virginia, on Tuesday, the 3d day of December, one thousand eight hundred and sixty-seven, to the voters of said State registered at the date of said submission for ratification or rejection;" and having directed that the following provisions of the said constitution, to wit:

\* \* \* \* \*  
*First.* That an election be held in the State of Virginia on Tuesday, the 6th day of July, 1869, at which election all registered votes of said State may vote "For constitution" or "Against constitution," (the provisions submitted to a separate vote being excepted,) and also on the same ballot "may vote for and elect members of the general assembly of said State, and all the officers of said State, provided for by the said constitution, and members of Congress," as apportioned by the ordinance adopted by the constitutional convention, and as hereinafter specified.

\* \* \* \* \*  
*Thirty-first.* The first congressional district is composed of the counties of Accomac, Northampton, Northumberland, Richmond, Westmoreland, Essex, Lancaster, Middle-



sex, King and Queen, King William, Gloucester, Matthews, York, James City, city of Williamsburg, Elizabeth City, Warwick, King George, and Caroline.

The second congressional district is composed of the counties of Princess Anne, Norfolk City, Norfolk County, city of Portsmouth, Nansemond, Southampton, Greensville, Sussex, Surry, Dinwiddie, city of Petersburg, Prince George, Isle of Wight, and Nottoway.

The third congressional district is composed of the counties of Charles City, Henrico, city of Richmond, Hanover, Chesterfield, Goochland, Powhatan, Amelia, Cumberland, and New Kent.

The fourth congressional district is composed of the counties of Brunswick, Mecklenburg, Lunenburg, Charlotte, Halifax, Pittsylvania, Franklin, Patrick, and Henry.

The fifth congressional district is composed of the counties of Greene, Albemarle, Fluvanna, Nelson, Buckingham, Amherst, Appomattox, Bedford, Campbell, Prince Edward, and the city of Lynchburg.

The sixth congressional district is composed of the counties of Frederick, city of Winchester, Clarke, Warren, Page, Shenandoah, Rockingham, Augusta, town of Staunton, Highland, Bath, Botetourt, Alleghany, and Rockbridge.

The seventh congressional district is composed of the counties of Alexandria, Fairfax, Prince William, Fauquier, Stafford, Rappahannock, Culpeper, Spottsylvania, town of Fredericksburg, Orange, Louisa, Loudoun, and Madison.

The eighth congressional district is composed of the counties of Montgomery, Giles, Pulaski, Wythe, Bland, Tazewell, Smyth, Washington, Russell, Scott, Lee, Wise, Buchanan, Grayson, Carroll, Floyd, Craig, and Roanoke.

In each of which districts, one person shall be elected as representative to the Congress of the United States by the qualified electors of the district. *In addition, one representative to Congress shall be elected by the ballots of the registered voters, voting at large throughout the State.*

By command of Brevet Major General Canby.

LOUIS V. CAZIARC,

*Aide-de-Camp, Acting Assistant Adjutant General.*

Under these orders the election was held for member at large, two candidates competing for that office, and the people supporting them by their suffrages, and the result was proclaimed by general orders, from which the following are extracts:

[General Orders No. 104.]

HEADQUARTERS FIRST MILITARY DISTRICT, STATE OF VIRGINIA,  
*Richmond, Virginia, September 8, 1869.*

At the election held in the State of Virginia on the 6th day of July, 1869, *pursuant to General Orders No. 61, headquarters first military district, dated May 21, 1869, and under the authority of the law of the United States of March 2, 1867, and the laws supplementary thereto and amendatory thereof, and of the proclamation issued by the President of the United States on the 14th day of May, 1869.*

7. That the following-named persons have received a majority (or plurality) of the votes cast by the qualified electors of their respective congressional districts, as established by an ordinance of the convention adopted April 14, 1868, and are entitled to certificates of election as members of the House of Representatives of the Congress of the United States for the said districts, as hereinafter specified:

First congressional district—Richard S. Ayer.  
Second congressional district—James H. Platt, jr.  
Third congressional district—Charles H. Porter.  
Fourth congressional district—George W. Booker.  
Fifth congressional district—Robert Ridgway.  
Sixth congressional district—William Milnes, jr.  
Seventh congressional district—Lewis McKenzie.  
Eighth congressional district—James K. Gibson.

8. *The following-named person has received a majority of the votes cast by the qualified electors of the State voting at large throughout the State for member of Congress at large, as prescribed by the ordinance of the convention, April 14, 1868, and is entitled to certificate of election:*

*State at large—Joseph Segar.*

By command of Brevet Major-General Canby.

LOUIS V. CAZIARC,

*Aide-de-Camp, Acting Assistant Adjutant General.*



And thereupon the general commanding issued the following certificate of election :

*To all whom it may concern :*

This is to certify, that at an election held in and for the State of Virginia, by the voters registered under the act of Congress of March 2, 1867, entitled "*An act to provide for the more efficient government of the rebel States,*" and the act supplementary thereto and amendatory thereof, upon the question of ratifying or rejecting the constitution framed by the convention called under the authority of said laws, and at which election it was provided by the 2d section of the law of April 10, 1869, that the voters of said State may vote for and elect members of the general assembly of said State, and all the officers of said State provided for by the said constitution, and members of Congress, *Joseph Segar was duly elected at large as a Representative to the Congress of the United States.*

Given under my hand, at Richmond, Virginia, this 9th day of September, 1869.

ED. R. S. CANBY,

*Bvt. Maj. Gen. U. S. A., Commanding First Military District.*

All the proceedings, including these, were submitted to Congress at the present session, and after full discussion approved, subject to certain conditions, and the State was readmitted. In the protracted and earnest debates, no objection was made to the provisions of the ordinance, fixing the number of representatives at nine instead of eleven, and for the election of one for the State at large, nor to the proceedings resulting in the election of such representative. It is not denied, but is freely admitted, that the power was in Congress, at all times prior to the final admission of the State to representation, to have prescribed the quota of representatives, and to have regulated their election, but we respectfully submit that by the acceptance of the State constitution and the approval of the proceedings cited with other conditions, and the final admission of the State without modification of the ordinance of the convention or the proceedings thereunder, Congress has accepted the proposition made by Virginia to readjust her quota of representatives and fix the number at nine instead of eleven, and to elect one member at large and approve her action and that of the President, by the general commanding, and we submit that this settlement of the question, which might otherwise have been mooted in the next Congress, is not to be regretted, especially as it gives to the State no more than her due proportion of representatives, and recognizes the right of the newly enfranchised citizens to representation.

#### REPRESENTATIVES AT LARGE. \*

A technical objection may be based upon the provision of the act of June 25, 1842, reenacted in subsequent acts:

That in each State entitled in the next and any succeeding Congress to more than one representative, the number to which such State is or may be hereafter entitled shall be elected by districts composed of contiguous territory, equal in number to the number of representatives to which said State may be entitled in the Congress for which said election is held, no one district electing more than one representative.

If this provision were deemed applicable, we might answer the objection by showing that it has never been observed, and is not now observed, by this House.

In the Twenty-eighth Congress, the first after this provision was enacted, the House admitted twenty members at large from the States of New Hampshire, Georgia, Mississippi, and Missouri, respectively, and voted that they had a right to their seats. (See Con. Elect. Cases, 2, p. 47.)

In the Thirty-fifth Congress, in 1858, the House decided "*That the election of members by general ticket instead of by districts is not a bar to*



*admission to seats in the House.*" (See case of Phelps and Cavanaugh, Con. Elect. Cases, 2, p. 248.)

That case was from a newly-admitted State, and therefore analogous to this of the readmission of a reconstructed State with changed boundaries. But the most striking case is that of the State of Illinois, which has been, ever since the Thirty-eighth Congress, and is now, represented in this House by a member at large notwithstanding this provision, the proviso allowing her a representative at large having expired with the Thirty-eighth Congress. See act of July 14, 1862, which contains the following:

*And provided further,* That in the election of representatives to the thirty-eighth Congress from the State of Illinois, the additional representative allowed to said State by an act entitled "An act fixing the number of the House of Representatives from and after the third day of March, eighteen hundred and sixty-three," approved March fourth, eighteen hundred and sixty-two, may be elected by the State at large, and the other thirteen representatives to which the State is entitled by the districts, as now prescribed by law in said State, unless the legislature of said State should otherwise provide before the time fixed by law for the election of representatives therein.

But it is not deemed necessary to dwell upon this point, because it seems obvious that the general act is not applicable to a reconstructed State when a change of circumstances calls for special action.

#### CONCLUSION.

On the whole case, we conclude that, whether it be regarded as a question of strict law or as one of equity, the member elect from the State at large should be admitted to a seat. We therefore recommend the adoption of the following resolution:

*Resolved,* That Joseph Segar is entitled to a seat as a representative of the State of Virginia at large in the Forty-first Congress of the United States.

Respectfully submitted.

JOB E. STEVENSON.  
D. HEATON.  
S. S. BURDETT.

I concur in the conclusion of the preceding report, as expressed in the resolution giving Mr. Segar his seat.

P. M. DOX.

#### JOHN S. REID vs. GEORGE W. JULIAN.

Hearsay evidence inadmissible.

Where contestant attacks the validity of a poll the sitting member may prove votes cast for him by parol testimony.

Polls should not be rejected for want of mere form, but the mandatory provisions of the law must be executed. An entire poll may be rejected for want of authority in the election board; fraud in conducting the election; or such frauds and irregularities as render the result uncertain.

The ballots cast at an election are not sufficient evidence of the result when the question of fraud is raised.

Persons cannot be officers *de facto* who do not possess the *qualifications* of officers *de jure*. The report was agreed to; yeas 127, nays 50.



July 6, 1870.—Mr. Cessna, from the special Committee of Elections, made the following report:

This contest comes from the fourth district of the State of Indiana, and springs out of the election held for member of Congress to represent that district of said State on the 13th day of October, 1868. The district embraces the counties of Fayette, Franklin, Hancock, Rush, Shelby, Union and Wayne. There were two candidates, George W. Julian and John S. Reid. Mr. Julian received the certificate of election from the governor of the State, was admitted, and still occupies the seat. Due notice of contest was given by Mr. Reid, and specifications of errors made sufficient, if established, to change the result of said election as announced.

The averments of the contest are embraced in nine specifications.

The first charge of the contestant is an allegation that he, the contestant, Mr. Reid, was duly elected by a majority of legal votes cast at said election, and not Mr. Julian.

The second and sixth specifications of the contestant can be considered together, relating as they do to the same subject-matter, and are as follows:

2. Because that in Wayne County, the clerk of said county certified to the secretary of state that you had received in said county at said election 4,041 votes, and that I had received 2,158; whereas, in truth and in fact, you received 4,516, while I received 2,834 votes for Congress, as is shown by the returns of the several poll-books, tally papers, and abstract of the board of canvassers of said county of Wayne, and State of Indiana, making a difference in my behalf of 201 votes.

6. Because the board of canvassers of the county of Wayne illegally and without right rejected and refused to count and certify the poll and vote of the south precinct of Wayne Township, in Wayne County, which had been lawfully returned to the board of canvassers of said county by the inspector and judges of said precinct; rejecting and refusing to receive 1,151 votes lawfully voted at said precinct, of which I received 676 votes and you received 475 votes for Congress.

The third specification of contestant is as follows:

3. Because the inspector and judges of Washington Township, in Wayne County, Indiana, illegally and without right rejected and refused to count in my behalf certain tickets printed and voted for me under the description of John S. Reed, which ought to have been received and counted for me under this name.

The fourth specification of the contestant may be considered at the same time with the seventh, as they relate to the same issue, to wit, the voting at the north poll of Wayne Township in Wayne County.

The fifth specification is as follows:

5. Because the judges and inspector of Clay Township, in Wayne County, Indiana, illegally and without right rejected and refused to count in my behalf certain tickets printed and voted for me under the name and description of John S. Reed, which ought to have been received and counted for me under this name.

The eighth specification relates to an alleged miscount of forty votes, improperly kept from Reid in Rush County; but as no proof appears to have been taken on this point, this specification is dismissed.

The ninth specification is as follows:

9. Because the clerk of Union County certified to the secretary of state that you received 862 votes in that county, and that I received in that county 687 votes; whereas, I received in that county 699 votes; the same being an error of twelve votes in my favor, as is shown by the returns of the board of canvassers and tally papers of said county.

In reply, the contestee, Mr. Julian, makes answer to the foregoing as follows: That the said Julian was duly elected by seven hundred majority.

He makes reply to the second and sixth specifications of the contestant as follows:

And for further answer to the second, sixth, and seventh causes assigned for said



contest, the said respondent says that at said election, at the north precinct in Wayne Township, 1,112 votes were polled for this respondent, and 427 votes for the contestant, the registry of the votes for said precinct having been legally and regularly made, and the election thereat being legally conducted in all things, and the votes there given to this respondent being legally given; and at the south precinct in said township, 660 legal votes were polled for this respondent, and 522 for the contestant, though it is true that there were counted, as having been voted at said south precinct, 475 votes only for this respondent, and 676 votes for the contestant. But this respondent, in this connection, alleges it to be true that said vote, so taken at said south precinct, was illegal, unauthorized, fraudulent, and void, and was correctly so held by the board of canvassers of Wayne County, and by said board properly rejected, and was not counted as forming any part of the legal vote polled at said township of Wayne, in this, to wit:

1. There was no registry for said precinct of the legal voters resident therein.
2. The officers conducting the election at said precinct were not residents within the limits of the same, or legal voters therein.
3. The officers conducting the said election at said precinct announced the result of the voting, on several occasions, before the polls were closed.
4. The officers conducting said election at said precinct removed the ballot-box, tally papers, &c., from the place of holding said election to another place in the north precinct, where the votes were counted and the final result made known.
5. The officers conducting said election in said precinct, during the time of taking in votes, and before the counting out was closed, adjourned on three several occasions, leaving the ballot-box alone and exposed to be tampered with by evil-disposed persons for at least forty minutes at each time.
6. Before the vote was finally counted out and the result made known, 169 ballots, which had been legally deposited in the ballot-box by legal voters of said precinct for this respondent, were fraudulently removed from said box, and 169 ballots, with the name thereon of the contestant, fraudulently put in said box in lieu thereof, by means of which fraudulent conduct in making said exchange of ballots, the vote of this respondent at said precinct was made to appear to be only 475, and the vote of the contestant was made to appear to be 676, and the same were so counted, and subsequently rejected as above stated, the count so made showing a majority at said precinct of 201 votes for the contestant, when in truth and in fact the actual majority of legal votes polled at said precinct for this respondent was 138.

In answer to the third, fourth, and fifth specifications of the contestant, the contestee, Mr. Julian, responds as follows:

And for further answer to the third, fourth, and fifth causes for the contest, this respondent says he knows personally nothing as to the facts therein alleged, but he has been informed that a few votes of this character were polled for the contestant at one or more of the polls named and rejected, but that the same were subsequently placed to his credit and counted by the secretary of state, thus diminishing the majority of this respondent to what it is stated to be in the official papers on file.

The contestee, Mr. Julian, denies the truth of the seventh specification of the contestant, and avers that the poll of said north precinct of Wayne Township was regular and legal.

The eighth specification of the contestant we have already dismissed. To the ninth specification he makes reply that the charge is not true.

The contestee, Mr. Julian, in addition to the foregoing, makes nine counter-charges in his answer.

Inasmuch as the sitting member has not taken much evidence in regard to these several counter-charges, and they have not been seriously pressed in the argument, and their consideration and decision would not change the result, we have omitted them from the report. This course will assist in simplifying and abbreviating the case. The answers of Mr. Julian need no further especial attention, except as they may be considered in examining the charges of the contestant. The first specification of contestant and first part of the answer of contestee are general and need no examination. This reduces our issues to five in number, to wit:

1. North poll of Wayne Township, in Wayne County, as assailed by contestant in his fourth and seventh specifications.



2. Washington Township, Wayne County, two votes for Reed, intended for Reid. (Third specification.)

3. Clay Township, Wayne County, certain tickets for John S. Reed, intended for John S. Reid. (Fifth specification.)

4. Union County clerk returned 687 for Reid instead of 699. (Ninth specification.)

5. Rejection of south poll of Richmond, in Wayne County. (Second and sixth specifications.)

We now proceed to consider these five several issues in the order named.

First. In regard to the north poll of Richmond, Mr. Reid complains thus in his seventh specification :

7. Because the board of canvassers of the said county of Wayne illegally and without right received and counted the vote of the north precinct of Wayne Township, containing 1,539 votes, and of which you received 1,112 votes, and 1,247 votes; the whole vote of said poll being illegal and void, in this: that no proper registry was made of said precinct according to law; that the persons appointed to make said registry were not freeholders as required by law; that the board of judges of said poll and precinct did not continue in session at the place of voting and count the whole number of tickets as required by law, but did adjourn and remove the ballot-box and ballots therein to another and different room than that in which the poll was had, and where the ballots were cast, and counted the same at another and different place, in violation of and contrary to law.

It is conceded on all hands that these two precincts were originally one; that in 1867 they were separated, or rather the southern or second precinct was formally established; that the registration of the entire city was made by the same officers, and duplicate copies furnished, so that one copy might be present at each poll. The contestant makes no other charges of fraud or irregularities against this poll, and in his argument concedes its validity, and seems to have introduced the issue by way of an answer to contestee's charge against the southern precinct. We do not think the charge has been sustained.

Before proceeding to consider the next issue we desire to notice some admissions of the parties. The certificate of the secretary of state of Indiana shows that Mr. Julian received 13,413 votes, and Mr. Reid 13,297 votes, being a majority of 116 votes for Mr. Julian. It is also admitted that in this return the vote of second precinct of Richmond was not included, and that this vote showed for Mr. Reid 676, and for Mr. Julian 475.

Second. In the second issue Mr. Reid claims two additional votes in Washington Township, Wayne County. He asserts that they were spelled Reed, instead of Reid. We find by a reference to exhibit No. 1, page 32, that nine votes were returned for John S. Reed, in Wayne County. But the secretary of state added these votes to those of John S. Reid, and the contestant cannot obtain any additional credit on this account. Mr. Reid now abandons his original ground of complaint in regard to these two votes, and argues that they were rejected by reason of certain marks or embellishments found upon the tickets, and that such rejection was improper. The law of Indiana compels the rejection of such tickets. Contestant did not produce said tickets to show the character of the marks thereon, nor did he specify any such reason in his notice of contest. He cannot, therefore, have this credit upon this ground. A plaintiff cannot be permitted to sue for a farm, and when defendant proves on the trial that he paid for the farm change his ground and ask to recover the price of a lot. Had he named both properties in his bill or declaration the defendant might have been prepared to prove payment of both.

Third. Clay Township, Wayne County. The specification in this case



is the same as the one just considered. Mr. Reid does not now pretend that anything of the kind occurred; but he shifts his ground and says the officers of the election made a mistake of eleven votes. This may or may not be true. It cannot be allowed by any rule of practice known to your committee. The reasons given in the case of Washington Township apply here; besides, the evidence is uncertain and the alleged mistake was discovered and certified by the officers after their duties were discharged and they were *functus officio*. Their pretended correction was not produced; could have no validity if present; and besides, the correction of this error, if admitted, would not affect the result.

Fourth. Mr. Reid, in his ninth specification, charges that in Union County the clerk certified for him 687 votes, whereas, in fact, he received 699 votes. We find on page 49 a certificate of the clerk of the court stating that the canvassers had made a mistake of five votes against Mr. Reid. We know of no law authorizing such certificate. The original returns are on file and must speak for themselves. We do find, however, that Mr. Reid has put them all in evidence. They are contained on pages 43, 44, 45, 46, 47, 48, and 49. They show that the vote of Mr. Reid in said county was as follows:

Centre Township .....	116
Union Township .....	81
Harmony Township .....	69
Liberty Township .....	142
Brownsville Township .....	215
Harrison Township .....	69
In all .....	692

In the district return, on page 32, Mr. Reid is credited in this county with 687 votes. He did not receive 699, as he avers; but he did receive 692, being five more than he was allowed upon the return. This credit of five votes is now allowed him, and the majority of Mr. Julian is thereby reduced to 111 votes.

Fifth. The fifth and last issue is much the most important one involved in the case. It is embraced in the second and sixth specifications of Mr. Reid, and relates to the south poll of Richmond. We have already given the charges of Mr. Julian against this poll, as contained in his answer. Before proceeding to examine the merits of the question, we desire to remark in regard to an application of Mr. Reid to "suppress certain portions of the evidence taken by Mr. Julian," that while we have made no formal ruling on the subject, we have been careful to give him the benefit of every legal position he assumed in his motion. The evidence taken after the expiration of the time allowed was not considered. The evidence of witnesses twice sworn was only considered as given at the time they were properly sworn, and hearsay evidence excluded. In order that the questions involved in this issue may be properly understood and justly decided, we insert the several sections of the statutes of Indiana bearing upon the points in dispute.

Sections 4, 5, and 6 of "An act regulating elections," &c., approved June 7, 1852, (see Statutes of Indiana, vol. 1, 306, &c.,) read as follows:

SEC. 4. In case such board shall designate more places of voting in any township, or form a precinct of two or more townships, such board shall annually at the June term, APPOINT SOME ELECTOR OF SUCH NEW PRECINCT to act as inspector thereof, and such inspector shall previously to the time of opening the election select TWO QUALIFIED VOTERS OF THE PRECINCT, who, with himself, shall constitute a board of judges of such election, and such board shall appoint two clerks; but in case there is but one precinct



in a township, and such township forms a precinct, such elections shall be conducted by the officers, and regulated by the laws provided for the government of such township, except as herein otherwise provided; and in case there is more than one precinct in any such township, and there shall *not* be in attendance on the day and at the hour appointed for any such election the officers authorized to conduct the same, the qualified electors present shall choose such officers according to the regulations hereinafter provided in section six of this act.

SEC. 5. Each elector shall vote in the township or precinct in which he resides.

SEC. 6. Each inspector or judge of elections shall attend at the place of holding elections IN HIS TOWNSHIP OR PRECINCT at or before eight o'clock in the morning of the day of elections; and should such inspector not appear at that hour, then the qualified electors of that township or precinct who may be present shall appoint an inspector of the election, and such inspector shall proceed to elect two judges, and such judges shall elect two clerks, as provided in section four of this act.

The third section of this act was amended by an act passed March 17, 1859, so as to read as follows, (same book, page 307):

The township trustee shall, by virtue of his office, be inspector of elections of such township, and shall designate the place where elections shall be held in their respective townships, and shall, with the consent of a majority of the legal voters that may be present prior to the opening of the polls at any precinct, appoint *two qualified voters of the precinct*, who, with himself, shall constitute a board of judges of such election, and such board shall appoint two clerks of said election, and the board of county commissioners of the proper county may designate one additional or more places of holding elections in any township, or form precincts of two or more townships, when the public convenience requires it.

On the 11th of March, 1867, the legislature of Indiana passed a registry law and an act regulating elections. Sections 2, 6, 18, and 23 are as follows:

SEC. 2. The board of commissioners of each county shall, immediately after the passage of this act, and annually at the December term thereafter, appoint two freeholders in each township, who, with the township trustee of said township, shall constitute a board of registry for said township; and each city council shall appoint three freeholders in each ward, who shall constitute the board for the registry of the votes of said city: *Provided*, That in each township with more than one place of voting, there shall be appointed three freeholders besides the township trustee, and the first named in the order of appointment shall be the inspector of elections in the second place of voting, and the one next the clerk of elections in said second place of voting, and the one last named a clerk in said place of voting, where the trustee is the inspector, &c.

SEC. 6. In case a new election precinct shall be formed by the organization of a new township, or by the division of any township or ward, or in the incorporation of a city or town, the judges or inspectors of elections in the new precinct thus formed may make their registry of electors on the day prescribed by this act, in such manner as a majority of them may direct; and for that purpose may make a list, or cause to be made a certified copy of the poll-list or lists of the district in which such new district is situated, or they may dispense with such list or lists, and proceed to make a register of electors from the best means at their command; said lists shall only embrace the names of such persons as are known to them to be electors in their district, and shall be posted up and copies made thereof as prescribed in the preceding section, and shall be corrected in the same manner that other lists are corrected.

SEC. 18. After the opening of the polls at any election in this State, no adjournment shall be had, nor any recess taken, until all the votes cast at such an election shall have been counted and the result publicly announced.

SEC. 23. That all ballots which may be cast at any election hereafter held in this State shall be written or printed on plain white paper, without any distinguishing marks or other embellishments thereon, except the names of the candidates and the office for which they are voted for; and inspectors of elections shall refuse all ballots offered of any other description: *Provided*, Nothing herein contained shall disqualify the voter from writing his own name on the back thereof.

In July, 1867, a petition was presented to the board of commissioners of Wayne County, reciting that as the law required the polls to open at 8 a. m. and close at 6 p. m., and forbids any adjournment, and that Wayne Township contained 2,859 voters, it would be impossible for all of said persons to vote at a single poll; and praying for a division of



said district by metes and bounds, and the erection and establishment of two separate precincts of election, to wit, the northern and southern precincts. On the 17th day of July, 1867, the prayer was granted and the two precincts established. (Pages 36 and 37.)

On the morning of the election in October, 1868, S. W. Lynde appeared at the poll of the southern precinct and claimed to act as inspector of elections. After some slight controversy, M. M. Lacey and John S. Lyle were declared elected as judges. Mr. Lynde claimed to act as inspector, because he was one of the board of registry for the township of Wayne. He acted as a sort of president of the meeting at the organization of the board, and put to vote the motions made. Mr. Lynde swears (pages 8 and 9) that he was *not a resident in, nor a citizen of, the southern precinct; that he was a citizen of the northern precinct, and that he did on that day vote at the poll in said northern precinct.*

Mr. Lacey testifies to precisely the same thing in regard to himself, (page 14,) and Mr. Lyle does the same, (pages 9, 10, and 11.) Several other witnesses bear similar testimony in regard to the residence of these three officers of the election board of the southern precinct. It is not denied by any one, nor in any place, that the three officers of this board were non-residents in the precinct where they held the election, and all of them voted on that day at a different poll.

The committee have endeavored to examine this point in two separate methods: First, to consider the evidence offered, with a view to correct and purge the poll as far as possible; and, secondly, the law and the facts bearing upon Mr. Julian's request to reject the entire poll.

In regard to the first proposition we find that Mr. Julian has called 508 persons who swear that they were voters in that precinct; that they voted in October, 1868, at that poll, and that they voted for said Julian. In the judgment of the committee, the evidence of these witnesses is as full, complete, and reliable as it is possible for human testimony to be given. It would be received in any court of justice in the country, and held sufficient to establish any fact in a civil, or even criminal, case. These names are appended to this report, and contained in statement marked Paper A. In addition to these he has called twenty-two other persons who give similar testimony in regard to themselves, and corroborate these by calling twenty-two witnesses who gave them tickets, and saw them vote. For this list see Paper B, hereto attached. He has also produced a list of other persons voting at said poll, being twenty-one in number, whom he also claims as having voted for him. Eight of these were examined personally, and thirteen witnesses examined as to the others. While the evidence in regard to this list is not so entirely conclusive and unanswerable as in regard to the other two lists, yet it is altogether satisfactory, and sufficient to establish a fact before any legal tribunal. For this list see Paper C.

Mr. Julian claims to have proved that he is entitled to twenty-nine other votes cast at this poll. See Paper D, hereto attached. The evidence in regard to these twenty-nine persons is such as to render it highly probable that they did vote for Mr. Julian, yet, as we think, insufficient to establish the fact as a legal conclusion. The weight of evidence and probabilities, however, are so largely in favor of this theory as to add greatly to the uncertainty of the return of this poll.

In this precinct the returns gave to Mr. Julian 475 votes, and to Mr. Reid 676. Had this vote been counted by the county board Mr. Reid would have had a majority of 85 votes in the district, making 90 with the credit of five votes hereinbefore allowed him. It is conceded, however, that Henry Bloomer and Joseph Englebert voted illegally for Mr.



Reid in said southern poll of Richmond, (page 356.) These two persons belonged to the northern precinct, and it is admitted that they voted illegally. Admitting this poll Mr. Reid's majority would be 88; rejecting it, Mr. Julian's would be 113..

Another reason urged by Mr. Julian in corroboration of the testimony of the witnesses is this fact: The northern and southern precincts of Wayne Township adjoin each other. Richmond is a large town, and the people who voted at both polls are near neighbors, similar in character and habits. Anything which would produce a marked effect upon the voters of one poll would surely show itself at the other. In the northern precinct Baker, (republican,) for governor, received 1,151 votes; Julian, for Congress, 1,112, or 39 less. In the southern precinct Baker is returned 660; Julian, 475, or 185 less. The disproportion is certainly great, and although not sufficient in itself to establish fraud, yet, in connection with other circumstances, it would seem to be entitled to considerable weight. Mr. Reid makes several objections to Mr. Julian's attempt to purge this poll. He says that in several cases of the 551 persons claimed by Mr. Julian, it is not shown by the witnesses that such persons were legal voters. In point of fact, this is true of some thirty or forty names. In the judgment of the committee no such proof was necessary in this case. The poll is either valid or void as a return of election. If void no effort to purge it is necessary. If the officers who held this election had authority, and if they could conduct it, then every vote which went into the box is presumed to have been given by a person duly qualified. The legal presumption in favor of the right of the voter is all that can be required. Mr. Reid also objects to the evidence produced by Mr. Julian on this point, and the manner of examining the witnesses. On this point he relies on the case of *Wheat vs. Ragsdale*, (27 Ind. Reports, 203.) The court below had admitted the evidence. The supreme court said:

One other question remains to be noticed. The contestor introduced on the trial one Charles H. Patterson as a witness, who testified that he was thirty-two years of age; that at the time of the October election in 1864, and for nine months or a year previous thereto, he had lived in Franklin Township, in said county of Johnson, and voted in said township. He was then asked to state for whom he voted for the office of treasurer of said county. The counsel of Wheat objected to the witness answering the question for the reasons—

1st. That the ballot of the witness was the best evidence.

2d. Because the ballot of the witness and others had been put in evidence by the contestor.

3d. Because oral evidence is not admissible when record evidence is to be had.

The court below overruled the objections and permitted the witness to testify that he had voted for Ragsdale for treasurer; to which ruling of the court the defendant's counsel excepted.

Now, what is the proper mode of examining a witness in such a case as this? The court says:

The record before us discloses the fact that the ballots counted out at the Franklin poll were before the court; and if they were not, if the witness could identify his ticket, and it had not been destroyed, it would have been the best evidence of the fact for whom he voted.

We think, therefore, that the witness should first have been asked if he could identify his ticket, and if he answered in the affirmative, search should have been made for it.

We are aware that this course of examination would most probably be of but little practical importance, as but few voters would be able to identify their ticket; but when insisted on, it would be the proper course of examination, it being in conformity with the strict rules of evidence.

The judgment below is reversed.

It does appear from the evidence that Mr. Reid made sundry objections to the evidence. It *does not* appear that he ever made any such objections as those stated by the court in the case just cited. It does



not appear that the tickets were before the notary swearing the witnesses, or before the witnesses being sworn. We therefore agree with the court in saying that the question supposed to be indispensable would have been of little practical importance. There were 1,151 tickets in this box for Congress, and it would be almost absurd to suppose voters could identify their tickets from such a number after a lapse of several months. Under all the evidence before us we believe that Mr. Julian received at this poll not less than 551 votes. There were returned for him 475 votes, or 76 less than he certainly received. The 76 votes taken from him were given to Mr. Reid; 1,183 persons voted. It is admitted that 32 did not vote for Congress. It is proved that the board adjourned two or three times from twenty-five to forty minutes. The opportunity was abundantly afforded for the commission of the fraud. Whether intentional or not on the part of the officers is no matter; the result is the same. This correction would make a difference of 152 votes. Admitting the return of this precinct as corrected by the evidence, Mr. Julian would have a majority of 64 votes.

The contestee, however, is not satisfied with this result. He insists that this entire return shall be rejected, and that he shall be allowed a credit for the votes he has established for himself in this precinct.

Much has often been said about the will of the majority, the security of the ballot-box, and the importance of a general and cordial acquiescence by all in the result of elections. For the most part these general remarks are true and entitled to great consideration. But it is equally important that such elections should be fair, and should be legally and honestly conducted. We can conceive of no greater danger to our institutions than such as would arise among the people by reason of a conviction that their will as expressed at the polls had not been correctly reported by the officers conducting the election, or that designing and wicked men had fraudulently defeated their intentions. To prevent this, every proper guard should be furnished and nothing should be omitted which is necessary to insure fairness and preserve public confidence. Elections should not be set aside for want of mere form, for innocent or unintentional irregularities. On the other hand, all the mandatory provisions of the law must be observed, or the election cannot and should not be sustained. These questions have often been considered by the courts of the country, by this House, and by the legislatures of the several States of the Union. In order to arrive at a just conclusion in this case, we propose to submit some authorities on the subject of sustaining and rejecting returns of elections for various reasons.

In *Boileau's case*, (2 Parsons, 503,) decided in 1845, although sustaining the election, the court say that—

In a case in which it is shown that, in making the preparatory arrangements for holding an election, a reckless disregard of, or a criminal carelessness as to, the directions of the law has been manifested, we would hold such an election undue and illegal.

And again, in the same case, they say:

This court would not hesitate in setting aside an election where they are convinced that in conducting it the laws of the Commonwealth have been infringed.

In *Kneass's case*, decided in 1851, (2 Parsons, 553,) the whole tenor of the opinion of the court shows clearly that the entire poll should be rejected for fraud or gross irregularities.

In the case of *Mann vs. Cassidy*, decided in 1857, (1 Brewster, 60,) the court say:

The care which this court has taken in former cases to guard the honest expression of the will of the people through the ballot-box from being affected by the omissions or neglects of election officers to perform what has been improperly styled "mere directory duties" seems to have been greatly misapprehended.



It never was the intention of this court to throw around election officers a shield of technicality which would interfere with the fair examination of their official acts or omissions. A mere slip, which can have no effect upon the integrity of the proceeding, ought not to vitiate it; but where it is disclosed, in the progress of a judicial investigation, that gross frauds have been allowed by the officers of an election, or that, by their whole course of conduct, they have invited persons to pollute the ballot-box by fraudulent or illegal votes, shall it be contended that, because the parties contesting such election have not been able to point distinctly in their petition to every act of omission or commission by which the result has been attained, the court investigating the case is powerless; and though convinced that the will of the people, as truly expressed, has been outraged by fraud, must, therefore, close its doors, and deny the people the very redress that the law requires the constituted tribunal to afford?

If such were the rule by which like cases have heretofore been measured, it is now full time to abandon it. The exigency of the times requires a more sensible one. But the rule, as heretofore applied, is not of so puerile a character. It will not shield gross irregularities. It will not hold valid the acts of election officers, when, for the perpetration of those very acts, the officers themselves are responsible to the criminal law, and subject to punishment.

And it is time that both the officers of election and the people by whom they are chosen should understand that incompetency, inefficiency, and neglect on the part of those conducting an election may entirely vitiate it, and even the fair and honest voter be disfranchised thereby. In this there is no real hardship. The voter must guard his rights in time. If he neglect them, and they be stolen away from him, why should he complain? Will any fair man object that votes illegally received shall be removed from the ballot-box? Surely no honest man, nor honest candidate, can desire to succeed by illegal means.

In the case of *Thompson vs. Ewing*, (1 Brewster, 109,) the court says:

Our duty, therefore, is to ascertain whether any fraud has been perpetrated, or whether the irregularities and negligencies have been so gross as to prevent us from relying upon anything that the election officers have done, in which cases we should be bound to require proof from those who sustain their acts or to disregard them entirely. This was the doctrine applied by this court in the case of *Mann vs. Cassidy*, and we see no reason to change it.

It has long been held by all the judicial tribunals of the country, as well as by the decisions of Congress and the legislatures of the several States, that an entire poll should always be rejected for any one of the three following reasons:

1. Want of authority in the election board.
2. Fraud in conducting the election.
3. Such irregularities or misconduct as render the result uncertain.

We are clearly of opinion that the first and third reasons were sufficiently shown in this case.

If the second reason has not been established against the officers conducting the election, it has been abundantly shown that these officers afforded the opportunity for some one else to commit the fraud, if they did not do so themselves.

This House has, in very many cases, rejected the entire polls for the several reasons before stated, or for either one of them. These decisions commenced many years ago, and have continued regularly until the present time. *Jackson vs. Wayne*, 1792, (Contested Elections, vol. 1, p. 47;) *McFarland vs. Purviance*, 1804, (same vol., p. 131;) *Easton vs. Scott*, 1816, (same vol., p. 272;) *McFarland vs. Culpepper*, 1807; *Draper vs. Johnson*, 1832, (same vol., p. 710;) *Howard vs. Cooper*, (2 vol. Contested Elections;) *Blair vs. Barrett*, (2 vol. Contested Elections, p. 308;) *Knox vs. Blain*, (2 vol. Contested Elections, p. 521;) and other cases therein cited.

Both volumes of contested election cases in Congress are full of such precedents. *Delano vs. Morgan*, *Myers vs. Moffat*, *Covode vs. Foster*, and numerous other cases not yet reported, are to the same effect.

In the trial of the Pennsylvania contested elections of 1867, the courts say: (1 Brewster, 171:)

The right of an elector rests on no uncertain or questionable foundation. It is clearly



defined in the fundamental law of the land. The possessor of this franchise holds a title to its enjoyment that is beyond the power of the legislature to take from him, or within the limits of the Constitution to abridge.

This right is thus sacredly guarded because ours is a government "of the people, for the people, and by the people," and when their will, expressed through the instrumentality of a popular election, has been ascertained, it shall, with all due fidelity, be established and maintained.

But the elective franchise, like other rights, is not one of unrestrained license. In a government of law, the law must regulate the manner in which it must be exercised. The time and occasion and mode of voting are to be prescribed by the legislature, except in so far as the Constitution has a voice of its own on the subject; and therefore it is that laws have been passed for the creation of election officers; regulating the hours of the day during which the elections shall be held; the proof necessary to establish the right to vote; the qualification of election officers; the assessment of taxes required to be paid by the voter; the record which is to be kept of the vote having been polled; the way in which the result shall be ascertained, and the return made up and preserved.

The election privilege is not, therefore, a mere constitutional abstraction, but is to be exercised in subordination to law, and on proof of title of the person claiming its exercise. The right, however well founded in fact, may be lost for want of such evidence of title as the law demands, just as the possession and enjoyment of property, secured by the declaration of rights to the citizen, may be taken away or withheld from him for the want of the necessary evidence of ownership.

We are aware of the fact that it is often argued in defense of irregularities, bad faith, and even fraud in conducting elections, that it is hard to disfranchise the honest voter by reason of the mistakes or misconduct of election officers. This view has been so completely answered by the judges, in the opinions already cited, that little more need be said on this point. It might be well, however, to add that no legal voter is disfranchised by throwing out a fraudulent poll. The only effect of such action by the proper tribunal is to destroy the *prima facie* character of the return, and to deny to the official acts of such officers the legal presumption of correctness usually accorded to the conduct of faithful agents. The way is always open to every candidate upon the trial of any contested election case to come forward and prove the vote which he received at any and every assailed precinct. In the case now under consideration the intention of the sitting member to assail the precinct alleged to be fraudulent was clearly made known and notice given to the contestant to that effect. He was represented by able and skillful counsel, and is a lawyer himself. No one knew better than he the great importance, and indeed the actual necessity, of sustaining the poll attacked by his adversary.

The committee therefore regard the fact that contestant made no effort whatever to prove the votes which he received, or to which he was entitled, in the district assailed by the contestee, as very strong circumstantial evidence against him. The only reasonable answer to the question why he did not so prove his vote would seem to be contained in the answer that he knew he could not; otherwise he certainly would have tried. The only other satisfactory reason which we can assign is the fact that so many of the voters had been called and sworn on the other side that not many were left for the benefit of the contestant, even if he had seen fit to make an effort to establish his vote at this precinct by calling and swearing the voters. The weight of this presumption is very greatly increased by the fact that while the trial of the case was in progress, the contestee was proceeding to prove, and did actually prove, as far as possible, the number of legal votes which he had received in the precinct which he had assailed. Under this state of facts it would hardly seem fair to charge that honest voters would be disfranchised by rejecting this poll. All that is done by such action of any proper tribunal is to destroy the *prima facie* character of the return itself, leaving the voter or the candidate to prove his right, which ought



not to be considered as proved by certificates of persons guilty of fraudulent conduct, or not qualified to give them.

We now propose to consider, briefly, the manner in which the election was conducted at the south poll of Wayne Township, in the light of the authorities cited:

1. Four hundred and seventy-five votes were returned for Mr. Julian; he has proved that he received at least 551, and probably more. To this it is feebly answered that the tickets and returns are the best evidence. This seems like begging the question. The fraud would evidently sustain itself. True, the evidence of contestee is mostly parol, but it is just such testimony as that which enables men to hold their property, to defend their characters, and even their liberties and their lives, in courts of justice.

2. Contestant secured a recount of the tickets—by what right or authority does not appear. It was introduced as evidence by him, however, and is shown by the testimony of Lynde and Parry, (pages 41, 42, and 43.) The tickets counted 1,181; the return showed 1,183. The tickets counted 479 for Julian; the return gave him 475. The tickets counted 670 for Reid; the return gave him 676.

3. The evidence shows that a few persons from the northern precinct voted at the southern. The officers swear they did not decide that citizens of one ward could not vote in the other. On the contrary, they say they supposed that they could do so. They seemed to have taken care not to vote themselves at their own poll. There were 1,183 persons voted at this precinct. It would seem very strange that among this large number no three men could be found who could read and understand a line of the statute directing where persons should vote, or comprehension enough to know that the same voters could not have two lawful places of voting at the same time.

4. There was no lawful registration of voters in this precinct. The law (act of March 11, 1867, secs. 2 and 6) provides how, when, and by whom a registration of a new district shall be made. Only one man (Mr. Rosa) of the entire board was a citizen of this precinct or qualified to act. Here it is urged in reply that if this registry was bad so was that of the north ward. The argument is not sound. Parry, (township trustee,) Lynde, and Lacey (35 and 36) all resided in the north ward, and all acted in making out the registration. Their action as to the north ward was entirely valid. As to the south ward it was mere surplusage and entirely illegal.

5. In one ward Mr. Julian was scratched 39 votes out of a poll of 1,151 republicans. If this be a true return (south ward) he was scratched 185 by their neighbors on a poll of 660 republican votes.

6. The law (sec. 28) expressly forbids any announcement of the result until after the closing of the polls and the counting of all the tickets. This was disregarded by the officers.

7. The law commands a continuous session of the board (sec. 3) until the work shall be completed. This was repeatedly violated.

8. Every provision of the law in regard to the manner of counting out the vote was disregarded, and persons wholly unauthorized were admitted to the room while this was being done, and one of those persons actually assisted in the work. (Pages 9, 10.)

9. The law commands that the ballot-box shall be guarded, and its custody belongs to the officers. This was also disregarded and defied.

10. The law provides that the inspector shall appoint the judges. These two judges were chosen by the crowd.



11. The ballots were carried from the proper district and counted in another.

12. The law requires that affidavits and papers taken or received by the board during the day shall be returned by the judge to the county board, to be filed with the clerk of the circuit court. Lacey, the judge, swears that this was not done.

13. *The inspector and both of the judges resided outside of the district.* They were wholly disqualified and without authority to act. The fourth section of the act of 1852 provides that some *elector of the new precinct* shall be appointed by the board (commissioners) as *inspector*, and that such *inspector* shall *appoint two qualified voters of the precinct as judges*. The third section of the act of 1859 provides that in case of a new precinct, the inspector shall *appoint two qualified voters of the precinct* as judges. The proviso to the second section of the act of 1867 declares that in case of a new district three freeholders shall be appointed besides the trustee, and the one first in order of appointment shall be inspector of the new place of voting, the second shall be clerk at the new, and the third at the old, place of voting. But the new law contains no repealing clause; it is in no way inconsistent with the acts of 1852 and 1859, as all could have full force and effect if the board of commissioners would make their order of appointment in accordance with the law; that is, place residents of the new precinct as Nos. 1 and 2, and a resident of the old precinct as No. 3, in the order of appointment. It is a well settled rule of construction, that one statute shall not be held to repeal another unless wholly inconsistent therewith, or an intention to repeal be manifest. But even if the law of 1867 had repealed those of 1852 and 1859, the case would be in no way different. In that case Lynde would have been inspector, and Rosa clerk, of the south precinct, and Lacey clerk of the north precinct, and two qualified voters of the south ward would have been judges therein. It is therefore manifest that they did not proceed under the law of 1867. Indeed, we can conceive of no law under which they could have acted. They do not now pretend to show any law to justify their pretensions, and neither the contestant nor any one for him has attempted to produce any law to justify their usurpation. On behalf of the contestant, however, it is urged that these persons were officers *de facto*, although it is conceded that they were not officers *de jure*. A large number of authorities have been cited to this point. It is freely admitted that the distinction between officers *de facto* and *de jure* is not well defined. The decisions of the House, and even the decisions of courts, on this question are somewhat inconsistent and conflicting. While we admitted that party spirit and surrounding circumstances have produced such apparent inconsistency in the decisions of the House, yet we venture to assert *that in no case has it ever been held that persons were officers de facto who did not possess the qualifications requisite for officers de jure*.

In the case of *Delano vs. Morgan* even the minority of the committee (democratic) reported in favor of excluding the entire poll of Blue Rock Township, and gave as a reason for so doing that the polls had been closed by the officers for about one hour so as to enable them to take dinner. To sustain this decision they quote the opinion of Judge Brinkerhoff, of Ohio, and yet in that case there was no pretense that the ballot-box was tampered with, but that the judges rather acted in ignorance of what their duties were. This case (*Delano vs. Morgan*) is directly in point in regard to the distinction we have attempted to make as to officers *de facto*. One of the officers of the Pike Township election was disqualified; the poll was rejected. The debates on this case are



full to the point, and the conclusion is full and complete in favor of the distinction we make. One may be an officer *de facto* who has been irregularly or improperly appointed or selected, and his acts may be binding on third persons; but in a case of personal disqualification of the officer for reasons which could not be cured by a change in the manner of his selection, the rule is universal that he can have no jurisdiction, and all his acts are void from the beginning for want of authority. It has been warmly urged on behalf of the contestant that he suffered a great injury at the hands of the board of judges of Wayne County. He vigorously denies their right to reject or omit the poll of any township or precinct. Were this a question of the *prima facie* right to the seat, had this committee had charge of the credentials of the claimants, such a question would have challenged our careful consideration. But this is not a question of that character. We are required to examine the case upon its merits; to find out the will of the people of that congressional district, and to determine who was honestly, fairly, and legally elected. We do not consider it important to review the action of these judges; we do not know officially upon what grounds they acted. If we are correct in our conclusion in regard to the last point made against the south poll of Richmond, it would follow that the judges were correct in their action. M. M. Lacey was the return judge; he did not live in the district; he held no office and had no legal right to hold any therein; he was just as much a stranger to this poll as if he had lived in a remote corner of the county, or in any other county of the State, or in any other State in the Union. The board had no legal right to receive any return from him. Had he been a foreigner, a citizen of China or Madagascar, he could have been received with the same propriety as could this citizen of a different election district.

On a careful review of the whole case we see no good reason to disturb Mr. Julian in the enjoyment of the seat he now occupies.

The committee therefore offer the following resolutions:

*Resolved*, That John S. Reid was not elected and is not entitled to a seat as a member of this House from the fourth congressional district of the State of Indiana.

*Resolved*, That George W. Julian was duly elected and is entitled to hold the seat he now occupies as Representative from the fourth congressional district of the state of Indiana.

*Resolved*, That there be paid to the contestant, John S. Reid, from the contingent fund of the House, the sum of \_\_\_\_\_, in full of all expenses touching said contest.

#### RECAPITULATION.

##### *Counting south poll of Wayne Township.*

John S. Reid—	
Certificate of secretary of state .....	13, 297
Error in Union County .....	5
South precinct, Wayne Township.....	676
Illegal votes admitted .....	2
Voted for Julian as proved.....	76
	— 78
	— 598
Total for Reid.....	13, 900



## George W. Julian—

Certificate of secretary of state .....	13, 413
Return of south poll, Wayne Township .....	475
Proved at this poll in addition .....	76

Total for Julian .....	13, 964
Total for Reid .....	13, 900

Majority for Julian without rejecting any poll .....	64
--	----

*Rejecting south poll of Wayne Township.*

## George W. Julian—

Certificate of secretary of state .....	13, 413
Proved in south poll of Wayne Township .....	551

Total for Julian .....	13, 964
------------------------	---------

## John S. Reid—

Certificate secretary of state .....	13, 297
Error in Union County .....	5
Proved in south poll of Wayne Township .....	60

Total for Reid .....	13, 362
Total for Julian .....	13, 964

Julian's majority .....	602
-------------------------	-----

TABLE A.—Persons who swear, without any reservation, that they voted for Mr. Julian.

No.	Name.	Page.	No.	Name.	Page.
1	Adams, Henry .....	157	27	Bartel, William .....	202
2	Adams, Nelson .....	247	28	Baylies, Edgar M .....	251
3	Addington, Abijah .....	147	29	Beaman, Charles T .....	101
4	Addington, Leander .....	94	30	Beechman, William M .....	143
5	Addleman, Benjamin F .....	83	31	Bell, Henry W .....	354
6	Addeman, Joseph P .....	94	32	Bennett, John G .....	326
7	Albertson, James .....	117	33	Bennett, Robert E .....	172
8	Allen, Alonzo .....	245	34	Bentley, Henry .....	221
9	Allen, Samuel S .....	148	35	Berheide, John H .....	90
10	Alexander, William W .....	258	36	Betzold, Joseph .....	186
11	Arknent, Edward .....	98	37	Biddlecomb, Daniel R .....	245
12	Arknent, Edward G .....	223	38	Binns, Amos G .....	264
13	Austin, William W .....	99	39	Binns, Richard .....	115
14	Avery, Increase J .....	136	40	Blakely, John H .....	335
15	Axford, Harris W .....	243	41	Blanchard, Albert H .....	143
16	Ayler, Augustus .....	158	42	Blanchard, William .....	158
17	Baer, Oliver P .....	85	43	Blease, James .....	161
18	Baltzley, Joseph .....	145	44	Bogert, Albert H .....	244
19	Barkalow, James .....	252	45	Bolander, James S .....	135
20	Barker, Matthew M .....	124	46	Bolander, William .....	237
21	Barnes, George W .....	77	47	Bond, Peter .....	130
22	Barnes, Samuel F .....	217	48	Bowe, James C .....	314
23	Barnes, Samuel F .....	329	49	Bowen, Clovis H .....	120
24	Barnes, Shapleigh F .....	204	50	Boyer, William C .....	207
25	Barnitt, Samuel .....	138	51	Bradbury, Charles E .....	83
26	Bartel, Fred .....	313	52	Brandel, Jacob .....	239



TABLE A—Continued.

No.	Name.	Page.	No.	Name.	Page.
53	Brehl, George .....	91	117	Edmondson, Edward .....	204
54	Brenizer, David .....	241	118	Edwards, Alfred .....	201
55	Brenizer, William .....	183	119	Edwards, Elias .....	168
56	Brower, James B .....	259	120	Edwards, Enos .....	176
57	Brown, Aaron .....	242	121	Edwards, John .....	224
58	Brown, Albert .....	337	122	Edwards, Thomas .....	226
59	Brown, Clayton .....	314	123	Edwards, William H .....	160
60	Brown, Clinton .....	334	124	Elliott, James R .....	137
61	Brown, Evander D .....	120	125	Elliott, Stephen .....	314
62	Brown, Hugh .....	236	126	Elliott, Upton .....	80
63	Brown, John S .....	229	127	Elliott, William .....	310
64	Brown, Samuel C .....	95	128	Elliott, William P .....	140
65	Buhl, Fred .....	324	129	Ellwood, William J .....	260
66	Buhl, James .....	321	130	Emrick, August .....	337
67	Bulla, Thomas .....	212	131	Emrick, Henry .....	134
68	Burditt, John W .....	322	132	Erbs, David .....	154
69	Burgess, Andrew .....	211	133	Erk, Harmon H .....	242
70	Burgess, John .....	191	134	Erwin, Edwin .....	84
71	Burke, Bartemus .....	333	135	Erwin, Samuel .....	257
72	Burke, Clinton A .....	228	136	Essenmacher, Charles .....	149
73	Burkhardt, Jacob C .....	250	137	Evans, Isaac .....	93
74	Butler, Benjamin M .....	224	138	Evans, Eli .....	222
75	Butler, Benjamin M .....	342	139	Fahyen, Jacob .....	210
76	Cadwallader, Howard .....	177	140	Ferguson, James C .....	145
77	Cadwallader, John H .....	171	141	Ferguson, Thomas J .....	138
78	Campbell, Charles A .....	183	142	Fetta, C. Henry .....	123
79	Chander, John G .....	92	143	Fetta, Edward C .....	123
80	Chappel, Abel W .....	226	144	Fetta, George H .....	227
81	Charles, Matthew .....	216	145	Finney, Joel J .....	103
82	Cheseldine, Andrew .....	260	146	Flemming, David M .....	163
83	Clarke, William H .....	239	147	Flemming, Joseph D .....	110
84	Clarke, William P .....	324	148	Flemming, Thomas W .....	141
85	Clawson, Mahlon .....	220	149	Fletcher, Samuel F .....	132
86	Coffin, Charles F .....	134	150	Floyd, John .....	230
87	Coggeshall, Oliver W .....	84	151	Follen, Patrick .....	261
88	Comer, Robert B .....	341	152	Fossenkemper, Henry .....	248
89	Comstock, Daniel W .....	359	153	Fox, Simon .....	120
90	Condo, George W .....	229	154	Francisco, Charles .....	231
91	Cool, Simon P .....	95	155	Francisco, Louis J .....	168
92	Cox, George A .....	325	156	Free, John W .....	179
93	Craig, Lewis .....	146	157	Fryer, James H .....	112
94	Crick, Conrad .....	196	158	Fryer, John C .....	96
95	Crocker, Benjamin .....	83	159	Fryer, Samuel .....	116
96	Crocker, Martin L .....	334	160	Gaston, Isaac .....	127
97	Davenport, Jacob .....	208	161	Gascoigne, John .....	258
98	Davenport, Warner .....	128	162	Gandling, Henry .....	153
99	Davidson, James .....	318	163	Gibbons, Ewell .....	232
100	Davis, Benjamin W .....	335	164	Gibbs, Ira B .....	181
101	Davis, Lewis S .....	167	165	Glass, Frank H .....	117
102	Davis, T. Henry .....	170	166	Graff, Paul C .....	168
103	Dean, Andrew B .....	235	167	Graham, Jacob .....	338
104	Denker, F. William .....	152	168	Grant, George H .....	76
105	Dennis, William T .....	81	169	Green, James P .....	108
106	Dickinson, Charles A .....	131	170	Green, Timothy V .....	245
107	Dickinson, Henry C .....	207	171	Green, William P .....	100
108	Dickinson, James H .....	88	172	Greenwood, Joseph T .....	216
109	Dickinson, Joseph .....	78	173	Griffith, John W .....	173
110	Deukelecker, Jacob .....	181	174	Griffith, Paul .....	118
111	Doan, Joseph .....	159	175	Griffith, Seth S .....	157
112	Deugan, John C .....	124	176	Grottendich, Henry .....	246
113	Deugan, Styles .....	111	177	Gross, Joseph .....	238
114	Deue, Isaac .....	197	178	Gubbs, John W .....	109
115	Du Hadway, Caleb S .....	306	179	Hadly, Edwin .....	139
116	Eckerle, Martin .....	220	180	Hadly, Elwood .....	94



TABLE A—Continued.

No.	Name.	Page.	No.	Name.	Page.
181	Hadly, John C .....	83	245	Knopf, Lewis .....	135
182	Hadly, William L .....	327	246	Knopf, Michael .....	253
183	Hale, Miles M .....	112	247	Knott, William .....	189
184	Hamer, Ellis .....	331	248	Koons, Jeremiah .....	311
185	Hand, John L .....	329	249	Koons, Benjamin .....	198
186	Hautzsche, Charles F .....	195	250	Kramer, George F .....	182
187	Harker, James F .....	102	251	Lamb, Henry H .....	348
188	Harriman, Simeon B .....	144	252	Lamm, Henry J .....	100
189	Hartley, George N .....	320	253	Lammest, Christopher .....	215
190	Harvey, Charles .....	92	254	Lancaster, William S .....	324
191	Hastings, Aaron H .....	319	255	Landwehr, Fred .....	256
192	Hawekotte, William .....	180	256	Larsh, La Fayette .....	252
193	Hawke, George P .....	198	257	Larsh, Leroy .....	99
194	Hayes, James M .....	79	258	Lawrence, Daniel .....	321
195	Hemback, Thomas .....	234	259	Leab, Christian .....	284
196	Henley, William .....	254	260	Leavitt, Zebina M .....	316
197	Hill, Albert G .....	219	261	Lesh, Daniel .....	85
198	Hill, Charles .....	181	262	Lewis, William A .....	315
199	Hill, Clayton .....	153	263	Lippincott, Samuel F .....	106
200	Hill, Daniel .....	175	264	Little, Henry .....	235
201	Hill, David H .....	184	265	Little, Samuel J .....	330
202	Hill, Elam B .....	219	266	Little, Thomas .....	85
203	Hill, Henry .....	217	267	Lloyd, Edward .....	213
204	Henshaw, William B .....	98	268	Long, Josiah C .....	250
205	Hobbs, Barnabus C .....	144	269	Longnecker, Ezra K .....	249
206	Hobbs, Marmaduke W .....	318	270	Lough, David .....	123
207	Hodgin, Jesse .....	349	271	Loyd, Benjamin .....	177
208	Hoerner, David .....	194	272	Ludlum, Joseph .....	188
209	Hoffman, Fred W .....	287	273	Lunt, Edward C. D .....	118
210	Holland, George .....	119	274	Macy, William J .....	339
211	Hollopetu, Wilson .....	250	275	Marmon, Charles H .....	113
212	Hollowell, Silas .....	205	276	Marsh, Timothy .....	221
213	Holmes, John W .....	325	277	Marshall, Charles .....	249
214	Hoover, George .....	327	278	Mason, John F .....	150
215	Hornay, Alexander .....	189	279	Mather, Phineas R .....	180
216	Hornay, Daniel C .....	256	280	Maxwell, Hugh W .....	178
217	Hornay, John A .....	325	281	Maxwell, Samuel .....	80
218	Hort, John W .....	326	282	McClellen, Thomas W .....	313
219	Howard, Isaac R .....	88	283	McClure, Nathaniel D .....	323
220	Howard, Robert A .....	91	284	McCullough, Lewis .....	187
221	Hunt, Alonzo .....	244	285	McIsaacs, Anthony .....	340
222	Hunt, Thomas .....	91	286	McIntyre, John H .....	102
223	Huntington, Oren .....	92	287	McKinnie, A. J .....	101
224	Hutson, Albert A .....	170	288	McMeans Alfred .....	211
225	Hutton, Albert R .....	104	289	McMeans, James A .....	122
226	Ingleman, Herman H .....	178	290	McMinn, William .....	209
227	Iliff, Joseph P .....	142	291	McNeal, Thomas B .....	316
228	Jeffries, Reuben .....	319	292	McPherson, John C .....	137
229	Jewell, George .....	330	293	McReynolds, Michael .....	255
230	Johnson, Abram S .....	223	294	Meek, Jere L .....	174
231	Johnson, Calvin R .....	82	295	Meek, Jesse A .....	310
232	Johnson, Pete .....	119	296	Meek, William H .....	179
233	Jones, Alfred P .....	80	297	Meerhoff, Herman H .....	171
234	Jones, Charles .....	96	298	Mendenhall, James .....	79
235	Jones, William H .....	111	299	Mendenhall, James R .....	84
236	Kelley, Ethan C .....	259	300	Mendenhall, Ludley H .....	149
237	King, Edwin R .....	125	301	Mering, Luther M .....	86
238	King, James, sr .....	103	302	Merkel, William .....	247
239	King, James, jr .....	109	303	Meyer, Henry .....	113
240	Kirn, Peter P .....	91	304	Miller, Bentley E .....	230
241	Kloeker, Frew W .....	165	305	Miller, James M .....	323
242	Klute, Eberhard K .....	156	306	Miller, Nimrod .....	228
243	Knopf, Charles H .....	233	307	Miller, Otto E .....	205
244	Knopf, Henry C .....	135	308	Miller, Sol. A .....	321



TABLE A—Continued.

No.	Name.	Page.	No.	Name.	Page.
309	Milliken, Joseph R.	201	373	Rowlett, Joseph F	170
310	Mitchell, David C	232	374	Ruley, Ambrose F	167
311	Moellering, Fred	209	375	Ruley, Samuel	142
312	Moffitt, Alexander	140	376	Rupe, Hamilton N	241
313	Moore, Benjamin	212	377	Russell, George W	103
314	Moore, Ira	312	378	Sammels, William	154
315	Moore, Oliver	337	379	Sanders, Henry F	339
316	Moore, William A	339	380	Sands, David	147
317	Morningstar, William	206	381	Searce, Henry	217
318	Morris, Enoch	225	382	Searce, Jonathan	98
319	Morris, Samuel B	333	383	Schiefner, Louis	206
320	Morrison, Robinson	105	384	Schofer, William	91
321	Morse, Isaac	207	385	Schofield, Samuel	192
322	Morse, William B	173	386	Schramm, Louis	156
323	Mote, Elisha J	96	387	Schroy, Alfred	200
324	Mote, Henry D	105	388	Scott, Alonzo	172
325	Mote, Marcus	77	389	Scott, Francis N	114
326	Mulford, Asa	114	390	Scott, James W	221
327	Muller, Bernard	220	391	Seiker, Christ	323
328	Mullett, Francis	149	392	Severingham, John D	108
329	Munell, Edward	131	393	Shelby, Jacob H	101
330	Henry	215	394	Shoemaker, Charles H	110
331	Neagle, Henry	223	395	Shoemaker, Robert H	90
332	Newby, Benoni	150	396	Shofer, Harmon	312
333	Newby, Isaac	136	397	Shofer, Louis O	97
334	Newby, Nathan	174	398	Short, John H	197
335	Newby, Samuel	160	399	Shute, Richard	214
336	Newport, Noble	189	400	Shute, Samuel, sr	212
337	Nicholson, Henry	225	401	Simpson, Robert	162
338	Nicholson, John	78	402	Skinner, Sidney M	112
339	Nicholson, William	227	403	Smelser, James	169
340	Nordyke, Charles A	151	404	Smith, Henry S	251
341	Nordyke, Ellis	151	405	Smith, George	333
342	Nordyke, Sylvanus	153	406	Smith, James	130
343	Nye, Joshua	81	407	Smith, James	307
344	Oberman, Ephraim	121	408	Smith, James T. N	255
345	Owen, Joseph P	204	409	Smith, John	237
346	Page, George G	243	410	Smith, John P	129
347	Parshal, Henry	322	411	Somers, Charles P	195
348	Patch, Charles M	317	412	Sennikson, Hans H	224
349	Pattison, Isaac N	148	413	Sparks, Simon	244
350	Paulson, Richard A	190	414	Spalding, Francis R	115
351	Peel, George W	162	415	Spencer, William F	104
352	Perry, Oren	130	416	Spiekenheier, John	336
353	Peterson, Charles P	168	417	Stanton, Edward	208
354	Phillips, Richard	261	418	Staub, Alois	238
355	Pickens, Robert	313	419	Steen, Henry	264
356	Pickett, John T	328	420	Stephens, Isaac	115
357	Piehl, Fred	203	421	Stevens, Ephraim M	94
358	Pilkington, Arnold	107	422	Stephenson, George T	121
359	Pittman Anthony	88	423	Stephenson, Thomas R	128
360	Poe, James M	109	424	Stephenson, William F	163
361	Potts, Edward G	143	425	Stamps, Franz J	354
362	Prescott, Albert J	142	426	Steuer, Joel	183
363	Prescott, Caleb S	254	427	Steuer, Harvey	251
364	Prescott, Edward J	159	428	Strawbridge, David	95
365	Railsback, David	106	429	Strattan, Samuel F	163
366	Reed, Albert S	125	430	Strattan, Simri	246
367	Reeves, Mark E	215	431	Stuart, Jonathan H	349
368	Reichert, John	351	432	Stubbs, Eli	161
369	Roberts, Eli	85	433	Stubbs, Lewis D	303
370	Roberts, Henry S	184	434	Studer, George	332
371	Roberts, Jonathan	184	435	Studer, John T	317
372	Rocastle, Frederick	205	436	Study, Abel L	95



TABLE A—Continued.

No.	Name.	Page.	No.	Name.	Page.
437	Suffrins, John .....	106	473	Wait, William W .....	179
438	Swaine, Jacob H.....	199	474	Walker, James C .....	320
439	Swalem, John J.....	147	475	Wallace, Samuel .....	122
440	Talhelm, Edward .....	175	476	Ward, Obediah S.....	257
441	Talhelm, Hezekiah W.....	108	477	Waring, William P .....	81
442	Taylor, Charles .....	94	478	Washburn, Daniel N .....	124
443	Taylor, Frank .....	311	479	Wasson, John H .....	87
444	Taylor, Samuel R .....	211	480	Wefel, Gerhard H.....	169
445	Taylor, William L .....	86	481	Weisbrod, Adolph.....	155
446	Teas, Edward Y.....	77	482	Wescott, John M.....	103
447	Templeton, Leonard D .....	82	483	Wettig, Louis .....	259
448	Tennis, Israel.....	100	484	White, Louis .....	265
449	Terpering, Eli .....	255	485	White, Oliver .....	78
450	Test, Alpheus.....	166	486	Whitridge, John C .....	87
451	Test, Lindley M.....	218	487	Widup, Sanders.....	116
452	Test, Oliver .....	202	488	Wierkuk, Henry W .....	222
453	Test, William .....	165	489	Wiggins, Charles O .....	77
454	Therdrer, David .....	240	490	Wiggins, Daniel P .....	137
455	Thomas, David .....	77	491	Winder, Joseph.....	315
456	Thomas, Eli .....	246	492	Wilkins, James E .....	267
457	Thomas, Jonathan .....	82	493	Wilkinson, John .....	193
458	Thomas, Landon R.....	176	494	Williams, Alfred K.....	241
459	Thomas, Samuel H.....	104	495	Wilson, Daniel H .....	322
460	Thompson, John W .....	79	496	Wilson, George .....	328
461	Thompson, William M .....	139	497	Wilson, Newby .....	335
462	Thompson, William Marcus .....	214	498	Wilson, William P .....	96
463	Tolman, Warren A.....	351	499	Winterling, Chris. H .....	140
464	Unstank, Joseph A.....	86	500	Wiltensberg, Charles.....	193
465	Updike, Lawrence I.....	82	501	Walfer, Martin H .....	231
466	Updike, Thomas J .....	342	502	Walfer, Leonard .....	168
467	Utsch, Peter.....	239	503	Woods, Isaac R .....	141
468	Vanneman, Andrew J .....	186	504	Woods, Burgass.....	331
469	Vanneman, John H .....	166	505	Woodward, Apolles .....	90
470	Vanneman, William H .....	274	506	Wooters, Richard .....	318
471	Van Tassel, William H .....	316	507	Yarrington, Edward W .....	138
472	Vase, Jacob J.....	164	508	Yeo, Jonas W .....	261

TABLE B.—Persons who swear they voted, and by their own oaths and others are proven to have voted for Julian.

Names of voters.	Page.	Names of witnesses.	Page.
Barrenpohl, Christian .....	213	Clayton Hunt .....	263
Gardner, James .....	329	Calvin R. Johnson .....	336
Gibson, Thomas .....	338	George Buhl .....	334
Greesefelt, Adam .....	253	Samuel F. Judah .....	262
Hoffman, Peter S .....	93	Clayton B. Hunt .....	262
Keinper, (Kinker) Herman .....	202	William Bartel .....	264
Knollman, Frank .....	266	Henry Fetta .....	346
Landwehr, Henry .....	200	Henry Fetta .....	346
Myers, Henry .....	176	Lewis D. Stubbs .....	203
Nestor, Thomas .....	350	John S. Hunt .....	352
Newman, Vincent G.....	117	John P. Smith .....	329
Ogborn, Argus C .....	155	Daniel W. Mooreman .....	266
Reulsbach, Enoch .....	242	Brasheer Hunt .....	355
Robinson, Francis W .....	218	Samuel R. Lippencott .....	352
Smith, Charles W .....	155	James T. N. Smith .....	347
Stern, James M .....	343	George W. Barnes .....	343
Steinhamp, Henry.....	205	John P. Smith .....	329



TABLE B—Continued.

Names of voters.	Page.	Names of witnesses.	Page.
Studer, John J .....	317	Joseph Maiteschcruz .....	343
Tapper, George .....	327	Ed. T. Burson .....	340
Underwood, John C .....	337	Thomas Edwards .....	345
Weber, Jacob .....	263	H. H. Lonnikson .....	344
Wertheimer, Jacob .....	226	David Homer .....	344

TABLE C.—Persons who are proven to have voted for Mr. Julian.

Names of voters.	Page.	Names of witnesses.	Page.
Arment, George W .....		Edward G. Arment .....	223
Butler, William .....		Frederick W. Hoffman .....	310
Cheeseman, William .....	113		
Dickinson, Henry W .....		James H. Dickinson .....	89
Davenport, John .....	210		
Espy, William P .....		Martin L. Crocker .....	334
Ford, David .....		Lindley M. Lest .....	352
Free, Joseph .....		Wm. W. White and Jno. W. Free ..	179
Hepp, Charles F. A. ....	317		
Hunt, John S .....	116, 352		
Kaufman, Benjamin .....	341		
King, Charles .....		William H. Sands .....	355
Layman, William .....		Otto E. Miller .....	331
Leek, Robert M .....		Charles Wittenberg .....	353
Ogborn, Joseph .....		Charles O. Higgins .....	344
Owen, John L .....	250		
Ritter, John A .....		Hugh Brown .....	236
St. Clair, (or Sinclair,) John ..		Lindley M. Lest .....	352
Tuschlagg, Bennad .....	349		
Wittenberg, Robert .....		Charles Wittenberg .....	353
Wallace, Joseph S .....	190		

TABLE D.—List of persons who probably voted for Julian, the evidence, however, being insufficient to establish such legal conclusion, the weight of evidence and probabilities being so largely in favor of that theory as to add much to the uncertainty of the return.

Names of voters.	Page.	Names of witnesses.	Page.
Federer, George .....		David Homer .....	194
Goodhigh, Frederick .....		David Hoerner .....	194
Miller, Benjamin .....		David Homer .....	194
Sevella, Henry .....		John P. Smith .....	129
Lamson, Daniel C .....	311		
Edwards, Elias .....	168		
Harvey, William .....	320		
Harmel, Jarvis .....	218		
Scearce, Albert L .....	325		
Seib, Theodore W .....	164		
Zimmer, Christian .....	126		
Heitbrink, Gerhard .....	279		
Massman, Bernard .....	292		
Parsons, Jehu M .....	198		
Robson, Richard .....	247		



TABLE D—Continued.

Names of voters.	Page.	Names of witnesses.	Page.
Corpus, Henry C .....		Miller, Otto E .....	332
Barrows, H. N .....		Judson Adams .....	354
Boydson, B. S .....		Lewis D. Stubbs .....	358
Elliott, Charles P .....		Lewis D. Stubbs .....	358
Harter, Andrew .....		Otto E. Miller .....	332
Lubert, Henry .....		Otto E. Miller .....	332
Rue, Richard .....		George W. Barnes .....	343
Sauer, Adam .....		Otto E. Miller .....	332
Todd, Hamilton .....		Lewis D. Stubbs .....	358
Washburn, William .....		Lewis D. Stubbs .....	358
Jones, John M .....	96		
Jones, Charles .....	96		
Smithmeyer, Joseph .....	110		
Thomas, Thomas W .....	362		

## MINORITY REPORT.

Mr. Randall submitted the following as the views of the minority:

This contest comes from the fourth district of Indiana, and arises out of the election held there for member of Congress to represent that district of said State, on the 13th day of October, 1868.

The district embraces the counties of Fayette, Union, Wayne, Franklin, Rush, Shelby, and Hancock, in the State of Indiana.

There were only two candidates, George W. Julian, and John S. Reid, Mr. Julian received the certificate of election from the governor, was admitted to the seat and still occupies the same, although Mr. Reid had a majority of all the votes cast, by the official returns. Mr. Reid filed his notice of contest, with specifications of errors relied on as sufficient to change the result of said election as announced by the governor.

The averments of the contestant are embraced in nine specifications, and we propose to simplify them as far as possible, that we may get at the real facts and points at issue.

The first charge of the contestant is an allegation that he, the contestant, Mr. Reid, was duly elected by a majority of legal votes cast at said election, and not Mr. Julian.

The second and sixth specifications of the contestant can be considered together, relating as they do to the same subject-matter, and are as follows:

2. Because that in Wayne County the clerk of said county certified to the secretary of state that you had received in said county at said election 4,041 votes, and that I had received 2,158; whereas, in truth and in fact, you received 4,516, while I received 2,834 votes for Congress, as is shown by the returns of the several poll-books, tally-papers, and abstract of the board of canvassers of said county of Wayne, and State of Indiana, making a difference in my behalf of 201 votes.

6. Because the board of canvassers of the county of Wayne illegally and without right rejected and refused to count and certify the poll and vote of the south precinct of Wayne Township, in Wayne County, which had been lawfully returned to the board of canvassers of said county by the inspector and judges of said precinct; rejecting and refusing to receive 1,151 votes lawfully voted at said precinct, of which I received 676 votes and you received 475 votes for Congress.

The third specification of contestant relates to an alleged miscount of two votes in Washington Township, in Wayne County, which ought to have been counted for said Reid.

The fourth specification of the contestant may be considered at the



same time with the seventh, as they relate to the same issue, to wit, the voting at the north poll of Wayne Township, in Wayne County.

The fifth specification relates to an alleged miscount of eleven votes in Clay Township, in Wayne County, which should have been counted for the said Reid.

The eighth specification relates to an alleged miscount of forty votes improperly kept from Reid in Rush County, but as no proof appears to have been taken on this point, we dismiss this specification, that it may not hereafter confuse the case.

The ninth specification is an alleged miscount by the clerk of Union County of ten votes improperly deducted from said Reid.

In reply the contestee, Mr. Julian, makes answer to the foregoing as follows:

First. That the said Julian was duly elected by seven hundred majority. This is in reply to the first specification of the contestant.

Second. He makes reply to the second and sixth specifications of the contestant as follows:

And for further answer to the second, sixth, and seventh causes assigned for said contest, the said respondent says that at said election at the north precinct in Wayne 1,112 votes were polled for this respondent, and 427 votes for the contestant, the registry of the votes for said precinct having been legally and regularly made, and the election thereat being legally conducted in all things, and the votes there given to this respondent being legally given; and at the south precinct in said township, 660 legal votes were polled for this respondent, and 522 for the contestant, though it is true that there were counted as having been voted at said south precinct 475 votes only for this respondent, and 676 votes for the contestant. But this respondent, in this connection, alleges it to be true that said vote so taken at said south precinct was illegal, unauthorized, fraudulent, and void, and was correctly so held by the board of canvassers of Wayne County, and by said board properly rejected, and was not counted as forming any part of the legal vote polled at said township of Wayne, in this, to wit:

1. There was no registry for said precinct of the legal voters resident therein.
2. The officers conducting the election at said precinct were not residents within the limits of the same, or legal voters therein.
3. The officers conducting the said election at said precinct announced the result of the voting on several occasions before the polls were closed.
4. The officers conducting said election at said precinct removed the ballot-box, tally-papers, &c., from the place of holding said election to another place in the north precinct, where the votes were counted and the final result made known.
5. The officers conducting said election in said precinct, during the time of taking in votes and before the counting out was closed, adjourned on three several occasions, leaving the ballot-box alone and exposed to be tampered with by evil-disposed persons for at least forty minutes at each time.
6. Before the vote was finally counted out and the result made known, 169 ballots which had been legally deposited in the ballot-box by legal voters of said precinct for this respondent were fraudulently removed from said box and 169 ballots with the name thereon of the contestant fraudulently put in said box in lieu thereof, by means of which fraudulent conduct in making said exchange of ballots, the vote of this respondent at said precinct was made to appear to be only 475, and the vote of the contestant was made to appear to be 676, and the same were so counted, and subsequently rejected as above stated, the count so made showing a majority at said precinct of 201 votes for the contestant, when in truth and in fact the actual majority of legal votes polled at said precinct for this respondent was 138.

In answer to the third, fourth, and fifth specifications of the contestant, the contestee, Mr. Julian, responds as follows:

And for further answer to the third, fourth, and fifth causes for the contest, this respondent says he knows personally nothing as to the facts therein alleged, but he has been informed that a few votes of this character were polled for the contestant at one or more of the polls named and rejected, but that the same were subsequently placed to his credit and counted by the secretary of state, thus diminishing the majority of this respondent to what it is stated to be in the official papers on file.

The contestee, Mr. Julian, denies the truth of the 7th specification of the contestant, and avers that the poll at said north precinct of Wayne Township was regular and legal.



The 8th specification of the contestant we have already dismissed. To the 9th specification he makes reply that the charge is not true.

The contestee, Mr. Julian, in addition to the foregoing makes counter charges as follows:

- I. That Reid was credited with 172 illegal votes in Wayne County.
- II. With 37 in Union County, in said district.
- III. With 135 in Franklin County, in said district.
- IV. With 72 in Fayette County, in said district.
- V. With 75 in Rush County, in said district.
- VI. With 165 in Shelby County, in said district.
- VII. With 101 in Hancock County, in said district.
- VIII. With 250 from illegal voters brought into said district by him.
- IX. That in said Franklin County there were 844 votes cast at irregular and illegal polls, and that Reid was credited with a majority of 330 of them.

2. The contestant, in person, and through his friends, on the day of the election, and for some time before, was actively engaged in importing persons into the district, not legal voters therein, and in preparing for the casting of their votes for him in violation of law; and he says that in this he was successful, especially at Brookville and Metamora, in Franklin County; Connorsville, in Fayette County; and Cambridge City and Richmond, in Wayne County; the illegal votes thus introduced and polled for him at said polls being at least 250. And in this connection this respondent says the contestant, in order to procure such illegal votes, and the transfer of voters from said county of Franklin to said Cambridge City and other polls to be there voted, agreed expressly with such voters, in person and through his friends, to pay all expenses incidental to the traveling and transfer of such voters from Metamora, in Franklin County, and other places in and out of the district to Cambridge City, and other polls in Wayne and other counties, and to protect them in voting at such polls as they might attend and vote at, and by such means contributed largely to the giving of the said 250 illegal votes for him, so imported into the district and transferred from place to place.

3. The townships of Brookville, Highland, Metamora, Ray, Salt Creek, Springfield, and Whitewater, in Franklin County, were each one precinct; the regular and only legal voting place in Brookville Township being the town of Brookville; of Highland Township, Highland No. 1; of Metamora Township, Metamora; of Ray Township, Oldenburg; of Salt Creek Township, Salt Creek; of Springfield Township, Springfield Centre; and of Whitewater Township, Whitewater No. 1. And this respondent says that, without authority of law, and in violation thereof, an additional poll was opened in each of said townships at said election, where votes were cast, received, and counted for the different candidates for the State and national offices to be filled; the vote given for the contestant and this respondent at such unauthorized polls being as follows, to wit: At said unauthorized poll in Brookville Township, the contestant received 155 votes, and this respondent 5 votes; at said unauthorized poll in Highland Township, the contestant received 56 votes, and this respondent 15 votes; at said unauthorized poll in Metamora Township, the contestant received 29 votes, and this respondent 4 votes; at said unauthorized poll in Ray Township, the contestant received 53 votes, and this respondent 32 votes; at said unauthorized poll in Salt Creek Township, the contestant received 72 votes, and this respondent 71 votes; at said unauthorized poll in Springfield Township, the contestant received 123 votes, and this respondent 84 votes; and at said unauthorized poll in Whitewater Township, the contestant received 99 votes, and this respondent 46 votes; making an aggregate majority for the contestant, at said unauthorized polls, of 310 votes, and swelling to that extent the majority of the contestant in said townships and in said county. And this respondent says that, although said polls were unauthorized by law, no registry of the voters was made, and no additional precincts were established, and no limitation upon the right to vote at such polls, except that of residence within said townships, said votes were counted by the persons holding said elections and by the board of canvassers of said county, by which means the majority for the contestant in said county was illegally made to appear to be 310 more than he legally received or than ought to have been counted for and credited to him.

As no testimony was taken by the contestee to sustain any of the charges made by him as to illegal voting in the counties of Monroe, Franklin, Fayette, Rush, Shelby, and Hancock in behalf of Mr. Reid, and there being no evidence whatever to sustain them, I dismiss them from the case; while with regard to the charge No. 3, above quoted, as to the wrongful establishment of several of the polls in Franklin County, I find from the evidence that they all were established by the board of commissioners of that county, who alone had the power and authority



to do so, and have been acknowledged polling places for many years in said county, acquiesced in by all parties, and the votes there received legal in every respect, so far as the evidence shows, or is found on the record.

The contestee, however, does not press these questions in his argument, and I will dismiss them with the other as wholly unproven.

Points made and in issue by Mr. Reid under the notice and evidence:

1. As to the legality of the south poll in Wayne Township, and whether it should have been retained and counted.

2. The legality of the north poll in Wayne Township, and whether it ought not to be rejected.

3. Whether an error in refusing to count two tickets for Reid was made in Washington Township, Wayne County, whereby Reid was deprived of two votes which he should have had counted for him.

4. Whether an error in count was made in Clay Township, Wayne County, whereby Reid was deprived of eleven votes he should have had counted for him.

5. Whether an error in the casting up of votes in Union County was made whereby Reid was deprived of ten votes which he should have had counted for him.

This contest coming from the State of Indiana, I have been guided in the decision of it by the laws of that State in so far as they are applicable, to which laws both gentlemen have referred and rely on.

Mr. Julian holds the seat by virtue of the certificate of the governor of Indiana, based on the report of the secretary of state from the official returns of the several county clerks of the counties composing the fourth congressional district in said State, viz:

Counties.	Julian.	Reid.
Shelby .....	2,090	2,654
Rush .....	2,093	2,023
Franklin .....	1,544	2,827
Union .....	852	687
Fayette .....	1,408	1,209
Wayne .....	4,041	2,158
Hancock .....	1,375	1,739
Total .....	13,413	13,297

Mr. Julian's majority, 116.

This result was reached, as the evidence shows and as is admitted by the contestee and contestant, in consequence of the clerk of Wayne County, in reporting the aggregate vote of that county, leaving out of his report the aggregate vote of the south precinct of Richmond City, a poll or precinct of Wayne County, at which Mr. Reid obtained 676 votes, and Mr. Julian received 475 votes, as returned by the judges of election; thus giving Mr. Reid a majority of 201 votes over Mr. Julian at said poll or precinct; but which was rejected by the board of canvassers of Wayne County, Indiana, and which was not counted by the county clerk in his return to the secretary of state, and consequently was not included by the latter in his aggregate of votes as certified to the governor. If this poll and vote had not been rejected by the board of canvassers of Wayne County, then Mr. Reid would have received a majority of 85 votes on the total vote over Mr. Julian, and, as a matter of right, would have been entitled to the certificate of the governor and



the seat in the House of Representatives, unless other causes prevented him.

### Election law of Indiana :

The first point for determination is, did the board of canvassers possess the legal authority to reject the aggregate vote of the south precinct of Richmond City, under the statutes of the State of Indiana? I find the law of the State contained in

AN ACT regulating general elections and prescribing the duties of officers in relation thereto.  
(Approved June 7, 1852.)

SEC. 31. When the votes shall be counted the board of judges shall make out a certificate, under their hands, stating the number of votes each person has received, and designating the office, which number shall be written in words, and such certificate, together with one of the list of voters and one of the tally-papers, shall be deposited with the inspector, or with one of the judges, selected by the board of judges.

SEC. 32. The inspector of each township or precinct, or judge of election, to whom such certificate, poll-book, and tally-papers shall have been delivered, shall constitute a board of canvassers who shall canvass and estimate the certificates, poll-list, and tally-papers returned by each member of said board, for which purpose they shall assemble at the court-house on Thursday next succeeding such election, between the hours of ten a. m. and six o'clock p. m.

SEC. 34. Such board, when organized, shall carefully compare and examine the papers intrusted to them, estimate from them the vote of the county, a statement of which shall be drawn up by the clerk, and shall contain the names of the persons voted for, the office, the number of votes given in each township to each person, the number of votes given to each in the county, and also the aggregate number of votes given, which statement shall be signed by each member of said board, and, with such certificates, poll-books, and tally-papers, delivered to the clerk, and by him filed in his office.

SEC. 35. Such board shall declare the person having the highest number of votes given for any office to be filled by the voters of a single county duly elected to such office, and certify the same in the statement above required.

SEC. 37. No tally-paper, poll-book, or certificate returned from any election by the board of judges thereof shall be rejected for want of form, nor for lack of being strictly in accordance with the directions herein contained, if the same can be satisfactorily understood.

I am therefore of opinion that, under the law of Indiana, the board of canvassers of Wayne County possessed no power whatever, under the law, such as they exercised when they rejected the votes of south precinct of Richmond City, and, in so doing, violated not only the spirit, but the letter and terms, of the law as heretofore received, and we believe said votes should be reinstated and counted.

In this opinion I am sustained by the opinion of the supreme court of Indiana in *Brower vs. O'Brien*, (2 Indiana Reports, page 430:)

With regard to this point, it may be observed that the duties of both the board of canvassers and the clerk, in making the estimate and declaration required, are merely ministerial. It is *not* within their province to consider or determine any questions relative to the validity of the election held or the votes received by the persons voted for. They are simply to cast up the votes given for each person from the proper election returns or documents, and to declare the person who, upon the face of these documents, appears to have received the highest number of votes given, duly elected to the office for which he was a candidate.

It cannot be denied that such is the law in Indiana, and similar provisions are to be found in the election laws of almost every State, construed in like manner by decisions rendered by the courts of such States respectively.

The contestee does not seem to have expected that this action of the board of canvassers would stand upon an examination of the case before a competent and constitutional authority, for he makes further charges as to this poll:

1st. That it was unlawfully organized.



The law and the evidence as presented fail in our judgment to sustain this objection; on the contrary, the law seems to have been carefully and closely adhered to. I find in the "brief of the contestee," Mr. Julian, the following language used:

An organized township, without further action of the board of county commissioners, constitutes an election precinct, but the county commissioners may divide a township into two precincts, or make a precinct of two or more townships.

It appears that on the 17th day of July, 1867, the citizens of Wayne Township, in which is situated the city of Richmond, petitioned the board to divide the same "along the line of the center of the Wayne County turnpike" into two precincts, to be called the "northern precinct" and "southern precinct," and to designate the places for holding elections in the same, and that said petition was granted, and the division made. (pp. 36 and 37.)

The evidence contains copy of the original petition, as presented, with certificate annexed, signed by "Sylvester Johnson, auditor of Wayne County, that the prayer was duly granted by the board of commissioners of said county."

2d. That there was no registry of the legal voters resident in said precinct made.

An examination of the testimony shows that there was but *one* registration for Wayne Township, common to both precincts. The registry used in one precinct was duplicated for use in the other precinct, each containing more names than were residents in the precinct where used. To throw out the votes of one poll for this cause would necessitate the throwing out of the other. If I did this for what at most was a mere irregularity Mr. Reid's majority would be largely increased. A reference to the issues of the parties shows that the contestant declares the registration legal in the southern precinct and illegal in the northern, and the contestee assails it in the southern and sustains it in the northern. We consider that the parties are in consequence estopped from questioning either registry as used. The presumption is that these registrations were correct and legal. There were only two polls. I dismiss this objection as invalid when alleged by either party as to these respective precincts.

3d. That the officers conducting the election at said southern precinct were not residents within the limits of the same, or legal voters therein.

The evidence shows that those officers acted with permission of all the voters present at the opening of the poll, had their sanction and approval as such, and, as far as is known or the testimony discloses, without a single objection during the day of the election from any one. I hold therefore, although they may not have been officers *de jure* they were officers *de facto*, and as such their acts were valid, so far as they concern the public and protect the rights of third persons, although they may have had no legal right to exercise the duties of such election officers, and should stand. They clearly should stand in the absence of fraud. But from an examination of the registry act of Indiana, approved 11th of March, 1867, I find that section second of said act clearly makes the *first* named of the appointed registers inspector of the second place of voting, which was the south poll, the township trustee being inspector of the first place of voting (the north poll) without any reference to residence, and section 6 of the election law of 1852 directs that said inspector shall proceed to elect two judges, and such judges shall elect two clerks, clearly meaning that the voters of this second poll shall elect the judges and clerks, which was done in this case, as appears from the evidence adduced by both parties, all of whom were voters of the township and were duly sworn into office according to law.



The question of fraud I have fully examined into and clearly set forth hereinafter.

In arriving at a decision on this point, I desire to cite a few judicial and congressional decisions which go to sustain us in this conclusion.

In *Wilcox vs. Smith*, (5 Wendell, p. 233,) the court say:

The principle is well settled that the acts of an officer *de facto* are as valid and effectual when they concern the public or third persons as though they were officers *de jure*. The affairs of society could not be carried on on any other principle.

In the case of the *People vs. Cook*, 4 Seldon, page 67, the New York court of appeals declared that—

An officer *de facto* is one who comes into office by color of a legal appointment or election. His acts in that capacity are as valid, so far as the public is concerned, as the acts of an officer *de jure*. His acts in that capacity cannot be inquired into collaterally.

In a recent report presented to this House in the case of *Eggleston vs. Strader*, we find the following statement made in referring to the decision next heretofore mentioned, to wit, in the case of the *People vs. Cook*, 14 Barbour, New York Reps., page 289:

In the township of Chesterfield one person, who was supposed to be an inspector of election, was present when the polls were opened, and proceeded to appoint two other persons as inspectors, and the three acted during the day and were recognized by the public as such inspectors. It was held that the reputation and acts were sufficient, making the three persons officers *de facto*, and the vote of the township was allowed and counted.

Again, the court in same case said, (page 259:)

It becomes important in this case to determine whether the objections which are taken to the inspectors of elections in the several cases presented in the bill of exceptions, are of that character which should be held to invalidate the canvass in these several localities. These objections are of a twofold character, extending to the *regularity or legality of their appointment and to their omission to qualify by taking the proper oath of office.*

It is sufficient that they were inspectors *de facto*. They came into office by color of title, and that is sufficient to constitute them officers *de facto*. The rule is well settled by a long series of adjudications both in England and this country, that acts done by those who are officers *de facto* are good and valid as regards the public and third persons who have an interest in their acts, and the rule has been applied to acts judicial as well as those ministerial in their character. This doctrine has been held and applied to almost every conceivable case. It cannot be profitable to enter into any extended discussion of the cases. The principle has become elementary, and the cases are almost endless in which the rule has been applied.

I might cite many other decisions by the courts of the country and by Congress. This House has, however, become familiar with them by reason of the numerous election cases which have recently come before it for decision, and a reference to the reports thereon is sufficient, and do not render it necessary to recite them all again in this case.

We cite a few of them:

In *Clark vs. Hall*, (Bartlett, 215,) the report of the committee has this language:

Your committee would not reject for mere informality a county abstract which truly presents the aggregates of the votes actually cast in the precincts.

In the case of *Flanders and Hahn*, (Bartlett, 443,) the committee used this language:

The principle and only aim of the law is to secure fair elections, and the non-observance of directory provisions cannot annul an election carried on with all the essentials of an election and with perfect fairness.

4th. That the officers of the election of the southern poll or precinct, contrary to law, announced the result of the voting on several occasions before the poll closed.

The facts as developed by the testimony show that upon the closing of the poll a partial count was made by the election officers of the heads of the tickets, and the result of such count for governor was announced,



but no announcement was made for any other candidate. This objection, if serious, would not weigh against Mr. Reid, as his vote or that of Mr. Julian was not so counted or announced; hence no illegal act was committed as to their vote. The law is surely directory which prevents the officers from making such announcement. A like announcement was made, as the testimony shows, of the vote for governor and *congressman* at the north poll, and as in the case of the registry, if this should cause the southern poll or precinct to be thrown out, so ought also the northern poll or precinct, which, as heretofore stated, would be fatal to Mr. Julian's election.

5th. The officers conducting said election at said precinct removed the ballot-box, tally-papers, &c., from the place of holding said election to another place in the north precinct, where the votes were counted and the final result made known.

The officers conducting said election in said precinct, during the time of taking in votes and before the counting out was closed, adjourned on three several occasions, leaving the ballot-box alone and exposed to be tampered with by evil-disposed persons, for at least forty minutes at each time.

According to the evidence, the charges above made by Mr. Julian are applicable to both polls. The election was held in two engine-houses, which, when night came, became cold, uncomfortable, were without fire or proper lights, and dangerous in the case of any alarm of fire. Both boards removed the ballot-boxes and ballots, tally-papers and registry, to another and different room, where they obtained fire and lights, and during the counting out of the tickets each had a recess or adjournment for supper. In the south poll the room was locked and so was the ballot-box, while at the north poll all was left open. The ballots could have been changed at the north poll by strangers or the officers of the board, while at the south poll this could not have been done unless by the whole board, or some one obtaining false keys, of which there is no evidence whatever.

The sixth and last objection to the southern poll or precinct by the contestee is as follows:

6th. Before the vote was finally counted out and the result made known, 169 ballots, which had been legally deposited in the ballot-box by legal voters of said precinct for this respondent, were fraudulently removed from said box, and 169 ballots with the name thereon of the contestant fraudulently put in said box in lieu thereof; by means of which fraudulent conduct in making said exchange of ballots the vote of this respondent at said precinct was made to appear to be only 475, and the vote of the contestant was made to appear to be 676, and the same were so counted, and subsequently rejected as above stated, the count so made showing a majority at said precinct of 201 votes for the contestant, when, in truth and in fact, the actual majority of legal votes polled at said precinct for this respondent was 138.

But no evidence is adduced to sustain this charge.

#### EVIDENCE OF FRAUD.

There is fraud charged by the contestee in his answer, and represented as one of the ingredients which ought to destroy the vote of the south poll or precinct of Richmond. It is charged, as above recited, that 169 ballots; which had been legally deposited in the ballot-box at this poll for the contestee, were fraudulently abstracted or removed from said box, and that 169 ballots were, with the name of contestant, fraudulently put into said box in lieu thereof, by means of which fraudulent conduct in making said exchange of ballots the vote of the contestee was made to be only 475, and the vote of the contestant to be 676, showing a majority for the contestant of 201 votes, when, in truth and in fact, the ma-



majority for him should have been and was 138 votes. He does not state when this change of ballots was made, nor has he alleged by whom, nor does the evidence show any such change as is alleged by the contestee, nor does he charge the contestant with any knowledge or participation in this fraud, nor is there any evidence that the contestant had any knowledge of the transfer, for indeed there is no evidence that any such change was ever made as charged by the contestee. The contestee endeavors to draw the *inference* of fraud from that part of the evidence quoted by him in his brief where he makes Mr. Lynde, the inspector, the historian of the transaction, and attempts to show by him how the ballots were received, taken out of the ballot-box, and the vote for governor counted by heads of tickets at the close of the election; and the contestee asserts that the testimony of Mr. Lyle, one of the judges, confirms the statement of Mr. Lynde, and he copies a part of each of their evidence into his brief as proof of the facts.

But where fraud is predicated on the testimony of any one or more witnesses, the whole testimony of each witness bearing on the point in issue must be given and taken, and as the *whole* evidence of these gentlemen not only repudiates all fraud in connection with the election, either in the receiving, counting, or recording of the ballots, but shows such a state of facts that it was impossible for any such fraud as charged to have been committed, unless each and all of them were guilty, not only in conniving at the fraud, but actually in committing the acts charged by the contestee themselves.

I copy below the evidence of Mr. Lynde, the inspector, in full, with that of the judges, which is confirmed by both of the clerks of the board, whose evidence is not impeached nor successfully denied by any one, and must be taken as true.

*Evidence of Inspector Lynde.*

SAMUEL W. LYNDE, of lawful age, being duly sworn to testify the truth, the whole truth, and nothing but the truth, deposeth as follows:

(Objection to the examination of this witness entered by respondent.)

Question. State your name, age, and residence, and whether you were a voter in Wayne Township, Wayne County, Indiana, at the State election in October, 1868.—Answer. My name is Samuel W. Lynde; my age is fifty-seven; I reside in the city of Richmond, Wayne Township, and I was a voter at the State election last October.

Q. State whether you acted as inspector at what is called the south precinct in Richmond, Indiana, at the said election in 1868, and who were the congressional candidates, if any, then voted for at said polls.—A. I did act as inspector in said precinct, as now understood, but as then understood, being merely the second place of voting in said township. George W. Julian and John S. Reid were the opposing candidates for Congress at that election, and were voted for at said poll respectively.

Q. State who were the judges and clerks of said election, and when and where you opened and held the same, and when you closed the poll. State where the voting was held, whether within the precinct or not.—A. M. M. Lacey and John S. Lyle were the judges, Augustus B. Young and Caleb S. Du Hadway were the clerks. The poll was opened at the No. 2 engine-house, at 8 o'clock a. m. of the 13th day of October, 1868; we closed the poll at 6 o'clock p. m. of said day. The voting was held in what is called the south precinct in the city of Richmond.

Q. State whether any poll-book of said election was kept, containing the names of the voters and the number of votes cast, and whether the names of the persons who voted were regularly entered as they were received, and written down on said poll-book. If so, whether after the polls were closed you selected the tickets so voted, and had them placed respectively to the several candidates, and whether you compared the said tickets in number with the total result of the names of the voters found on the poll-books, and say whether you found the same to tally and agree together, or not.—A. There were two poll-books kept, one by each clerk, containing the names of the voters and the number of votes cast. The names of the persons who voted were regularly entered on those poll-books as they were received. After the polls were closed, we selected the tickets voted, and placed them respectively to the several candidates.



We compared the said tickets in number with the total result of the names of the voters found on the poll-books, and found them to agree.

Q. State what action, if any, the board of election at said precinct took in certifying the result of the votes cast at said precinct for the several candidates on the poll-books; and state whether any tally papers thereof were made out; and, if so, when.

(This question objected to, especially so much of it as relates to what action the board of election took in certifying the result of said election.)

A. I can merely say that the judges and myself counted out the tickets, and the clerks put down on the tally-papers as we counted; this was done on the evening of the election.

(This answer objected to as not being responsive to the question.)

Q. State, if you know, where the poll-books and tally-papers of the said precinct now are; and if in your possession, please produce one set of each.—A. There was one of the poll-books and tally-sheets taken over to Centreville, and the other poll-book and tally is here.

Q. Examine the document now placed in your hands; state what it is, where it has been kept, by whom, and under what authority it was made; and by whom and when was it certified. State fully all you know concerning said document.—A. The document now presented as Exhibit A is one of the original poll-books of said precinct. It has been deposited in the office of William Parry, township trustee. This document was made by one of the clerks at the last October election—either C. S. Du Hadway or Augustus B. Young—I am not positive which—and was made by the authority of the board of election at that time. It was made in the presence of the board, during the election. It was certified to the next morning after the election by myself, M. M. Lacey, and John S. Lyle, inspector and judges of the election. There was another original poll-book made by the other clerk at the same time and place.

(The contestant now offers Exhibit A—to wit, the poll-book with its certificates—as part of this deposition.)

Objection made to the introduction of this exhibit by respondent.)

Q. Examine the other document now placed in your hands as exhibit B, and state what it is, where it was made out, by whom and under whose authority, where it has been kept, and by whom certified. State all you know about it.

(Question objected to by respondent.)

Q. The document now produced as Exhibit B is one of the tally-sheets of the votes made out in the south precinct of Richmond at the last October election. It was made out on the evening of the election, as the tickets were counted out. It was done by one of the clerks, by authority of the election board, and in the presence of the board. Since that time it has been kept in the office of the township trustee, William Parry. It was certified to by the inspector, judges, and clerks, as therein stated, the names of whom are Samuel W. Lynde, Martin M. Lacey, John S. Lyle, inspector and judges, and Caleb S. Du Hadway and A. B. Young, clerks; the signatures of whom are genuine.

(The contestant now offers Exhibit B—to wit, the tally-sheet with its certificate—as part of this deposition.)

Objected to by respondent.)

Q. State under what form of registry, if any, was the said election at said precinct held, and under whose care and supervision the said registry was made; who were the registers, and whether the registry was one made for the precinct or the whole township.

(Question objected to by respondent.)

A. There was but one registry made for the whole township for that election. The said registry was made under the supervision of William Parry, president of the board and township trustee, assisted by Frederick Rosa and myself. M. M. Lacey was appointed one of the board of registry by the county commissioners, but did not act all the time at the making of the registry. My impression is that he did not act at all during the making of the registry.

(This answer objected to by respondent.)

Q. State, if you know, how many voting precincts were in Wayne Township at the time of said October election, and whether a separate registry was made for each precinct or not.

(This question objected to by respondent.)

A. There were two, and only two, voting precincts in the township at the time of that election, and there were not two separate registers made.

Cross-examination by L. D. STUBBS, esq., attorney for respondent:

Q. State in what part of Wayne Township you resided on the 13th of October, 1868, at the time of said election; whether north or south of Main street, in Richmond, and whether north or south of the Wayne County turnpike.—A. I lived north of Main street, in the city of Richmond, and north of the Wayne County turnpike, on the 13th day of October 1868. I never lived south of the Wayne County turnpike in Richmond.



Q. State in which precinct of Wayne Township you resided on the day of the election, on the 13th of October, 1868.—A. I lived in the northern precinct.

Q. Is not the northern precinct known as precinct No. 1, and the southern precinct as precinct No. 2?—A. Not to my knowledge. They have always been called the first and second place of voting, until after the October election. By virtue of my appointment as first on the board of registry, I became inspector at the second place of voting, as I so understood it.

(All of the above answer objected to by respondent, except that part which was responsive to the question.)

Q. State whether or not the board holding the election in said south precinct continued in session at the place where the polls were opened until all the votes given at such election were canvassed and the result publicly proclaimed; and if not, what did they do, and to where did they go, if to any other place?—A. It did not; but we, immediately after the polls were closed, took our ballot-boxes, poll-books, and papers, and went to a room in the Telegram building, on the second floor, and directly under the Telegram office, occupied by M. M. Lacey and Bragg, the assessor. The Telegram office is situated fifteen or twenty rods from the place of holding the election, and north of the Wayne County turnpike, in the northern precinct, in Wayne Township.

Q. State what was the first thing you did toward ascertaining the result of said election.—A. The first thing we done was to look over the heads of tickets and see how many republican tickets there were, and how many democratic tickets there were, taking the governors as the heads.

Q. Who took the tickets out of the box?—A. The clerks, judges, and myself—all helped to take them out and count them and assort them.

Q. Do you remember and can you state what was the result of this preliminary canvass? and if so, state what number of votes each candidate for governor received, as you then ascertained by said preliminary canvass.—A. I do not remember now just what number each candidate received. I went down to the street and publicly announced the result of the vote for governor, as William Parry, township trustee, and as I had understood to be the requirements of the law; the way that he, William Parry, township trustee, and I, have been doing since the registry law went into effect.

Q. State whether the result of that canvass, as to governor, was the same as the final result certified to by you on Exhibit A.—A. I think it was, or very near; it might have varied three or four votes. I do not know that it did.

Q. State what you did after you made said announcement.—A. We then went to get something to eat.

Q. Who went, where did you go, and where and how did you leave the ballot-boxes, poll-books, tally-papers, &c.?—A. The whole board went, including the clerks. I went up to my house; where the rest went I do not know. We left the ballot-boxes in the room in which we had been counting out, on the table. We put the republican tickets in one box and the democratic tickets in the other. The republican and democratic tickets, thus separated, and put into the different boxes, were designated by the vote for governor.

By consent of parties adjourned till two o'clock p. m.

Two o'clock p. m., hearing resumed.

Q. State how long it was from the time when you adjourned, as stated in your last answer, until you returned. In answer to cross-interrogatory.—A. I was gone not to exceed twenty-five minutes.

Q. State what you did after you returned.—A. When I first came back the door was still locked; I had no key to the door; in a few minutes the rest of the board and clerks came; M. M. Lacey had the key to the door, and I had the key to the ballot-boxes; when Lacey came and unlocked the door, we went in and commenced to count out the tickets, and tally them; we began with the republican tickets; we took the unscratched tickets and counted ten at a time, until we got through with all the republican tickets that were unscratched, or, in other words, a clean ticket; I am not positive whether we then proceeded to count out the straight-out democratic tickets or counted out the republican tickets which John S. Reid's name was on; we either did one or the other, and continued counting until all the straight tickets on both sides were counted; we then went down and got some oysters; this was about eleven o'clock p. m.; the tickets were all strung on a string as fast as they were tallied; and when we went down to get the oysters we put the tickets into the ballot-box and locked them up; the tickets that were strung, I think, were put into the ballot-box on top of those that were yet in the box; I am not positive, but think that was the way it was done; the box or boxes that contained the tickets were locked, and I took the keys; the inside doors opening out into other rooms were bolted, and the outside door was locked, and M. M. Lacey took the key; we were gone, I think, about fifteen minutes, and returned and proceeded to count out the scratched tickets, until they were all counted; we then went home, after locking up all the tickets and papers; this was between twelve and one o'clock, or about that time; I took the keys to the ballot-boxes, and M. M. Lacey took the keys to the doors;



we returned again in the morning and made out the certificates that are found on the poll-books and tally-papers, and took the poll-books, tally-papers, and ballot-boxes up to William Parry's, township trustee, office, and deposited them with him.

Q. Who strung the tickets?—A. I do not recollect now who did string the tickets; I think George Ross strung part of the tickets; I do not know whether he strung them all or not.

Q. Who took the tickets out of the box?—A. The tickets were taken out of the box by myself; and either Lyle or Lacey, I forget now which of them, helped me to pick out the tickets; two of us assorted them over, until we got ten that were alike, and then handed them to the third man to call off to the clerk, so long as we could find ten that were alike, and when we could not find ten that were alike we took a less number.

Q. Was each name printed or written on every ticket read aloud?—A. It was not done in that manner; we would just take ten tickets that were alike and call off one ticket and had the clerks to put down ten marks to each name on the ticket.

Re-examined:

Q. State at what time of the day and for what cause did you remove from the place where you received the ballots to where they were assorted and counted, and who carried or took charge of the ballot-boxes and poll-books at the time of the removal?—A. At six o'clock in the evening; as soon as we closed the polls we left the place where the polls were taken; we removed for the reason that the place where we took the votes was not a suitable place to count out; the reasons why are these: first, there was not sufficient light, only one gas-light, and that was close up to the ceiling, and in case of fire we would have been in danger of being run over by the engine, it being a fire engine-house, subjecting our ballot-boxes and ballots to be scattered to the four winds, and because the same course had always been taken heretofore at our elections; I know I carried one of the ballot-boxes, and Lacey or Lyle, I am not sure which, carried the other ballot-box; the poll-books, I think, were put into the ballot-boxes before the removal.

Q. State in what condition you found the ballot-boxes, poll-books, and doors of the room on your first or second return from eating, or either of them; and did you notice any change or appearance of change in either of them, as if they had been tampered with by any one in your absence? If so, state what this change consisted in, and what had been done to them.—A. In both cases I saw no change whatever, and I have not the least idea that there was any change.

(So much of this answer as goes to give his opinion and not a statement of facts is objected to by the respondent.)

S. W. LYNDE.

*Evidence of Judge Lyle.*

JOHN S. LYLE, of lawful age, being duly sworn to testify the truth, the whole truth, and nothing but the truth, despoth as follows:

(The introduction of this witness objected to by the respondent.)

Question. State your name, age, and where you resided on the day of the October election, 1868; whether you was a voter of Wayne Township, in Wayne County, Indiana.—Answer. My name is John S. Lyle; age, forty-seven; I resided in Wayne Township, Wayne County, Indiana, at the time of the October election, 1868, and was a legal voter at said election in said township.

Q. State what position, if any, you held on the election board of what is called the South precinct, at Richmond, at the State election of 1868, and how you were appointed or held the same.—A. I was one of the judges of the election held at the South poll; I was elected by the voice of the people assembled at that poll previous to its being opened.

Q. State if you acted as one of the judges, and if you remember at what hour the poll was opened, and at what hour the same was closed, and who were the inspectors, judges, and clerks at said election.—A. I acted as one of the judges at that election; the polls were opened at 8 a. m., and closed at 6 o'clock p. m. Samuel W. Lynde was the inspector; M. M. Lacey and myself were the judges; Caleb S. Du Hadway and Augustus B. Young were the clerks.

Q. Examine Exhibit A, in the desposition of Samuel W. Lynde, and state what it is, when it was made, by whom, and whether the signatures attached to the certificate are genuine.

(This question objected to by respondent.)

A. This document, now shown me as Exhibit A, is one of the poll-books of that election; it was written down on the day of the election by one of the clerks of that election; the signatures thereto attached are genuine.

Q. Examine Exhibit B, in the desposition of the said Samuel W. Lynde, and state what it is, when it was made, under whose authority the same was done, and whether the signatures attached to the certificate are genuine.

(This question objected to by the respondent.)



A. This document shown me as Exhibit B is one of the tally-sheets of that election ; it was made on the night of the thirteenth and morning of the fourteenth days of October, 1868 ; commenced in the evening and ended in the morning ; it was done under the authority of the board of election, and in their presence ; the signatures to the certificate are genuine.

Q. State, if you remember, how the tickets were counted out, by whom, at what place, and all that you know about the operation.—A. The tickets were counted out in the assessor's office occupied by M. M. Lacey, on the northeast corner of Main and Marion streets, in the city of Richmond, in Wayne Township ; after the polls were closed the board took the ballot-boxes and papers from the engine-house where the election was held, to the place where they were counted. The boxes were opened by the inspector and the board commenced separating the tickets from the republican tickets, and only examined the vote for governor of each party. After separating the tickets, and counting them, we placed the democratic tickets in one box, and the republican tickets in the other. The inspector then locked the boxes and went down onto the street and publicly announced the result of the governor's vote. We then locked up the office and went to supper ; we were absent about twenty-five minutes, when we returned and commenced counting the votes. We commenced counting the straight republican votes first ; they were assorted and taken out of the box by M. M. Lacey and Samuel W. Lynde ; we commenced counting five at a time ; Samuel W. Lynde handed the tickets to me and I called out the names voted for, and told the clerks the number of marks to make for each name ; I then handed the tickets across the table to George Ross, and he strung them ; after we called fives a few times, we commenced counting by tens, and kept on counting in this way until we finished counting out all the republican straight tickets. We then commenced counting the democratic straight tickets ; my impression is that we counted out all the straight democratic tickets before we took the recess to get some oysters, which was about eleven o'clock p. m. ; the tickets that were not counted were locked up in the ballot-box and Samuel W. Lynde took the key ; M. M. Lacey locked the door of the room and we then went to Jordan's for some refreshments ; the whole board, together with the clerks, went together, and returned together ; after returning we commenced counting out and remained counting until we got through, which was about two o'clock a. m. of the morning of the 14th day of October, 1868, at which time, the clerks becoming sleepy, we concluded to adjourn until after daylight ; we returned on the same morning about seven o'clock and made out and signed the certificates ; we examined all the counts and tally-papers carefully, and found them correct.

Q. State what was the cause, if any, that made you move from the place of voting to where you counted the votes, and who, during said removal, took charge of the ballot-boxes, poll-books, &c.

(This question objected to by respondent.)

A. One cause was, there was insufficiency of light ; and it was on the lower floor of the engine-house, with large folding-doors in front, and very uncomfortable, and being an engine-house, we would have been subject to serious disturbance upon alarm of fire by the running out of the engine. Samuel W. Lynde carried one of the ballot-boxes, and M. M. Lacey carried the other, during the removal from the place of voting to the room in which the votes were counted.

Six o'clock p. m., January 13, 1869. Hearing adjourned till Thursday, January 14, 1869, at 9 o'clock a. m.

THOMAS N. YOUNG, *Mayor*.

MAYOR'S OFFICE, RICHMOND, WAYNE COUNTY, INDIANA,

January 14, 1869—9 o'clock a. m.

### Hearing resumed.

Cross-examination, by L. D. STUBBS, esq., attorney for respondent :

Q. State in which precinct in Wayne Township you resided on the 13th day of October, 1868.—A. I lived on the north side of the National Road, in the city of Richmond, on the 13th day of October, 1868.

(Answer objected to by respondent as not being responsive to the question.)

Q. State on which side of the Wayne County Turnpike you resided on the 13th day of October, 1868.—A. On the north side.

Q. You state in your answer to direct interrogatory first, that "you were a legal voter of Wayne Township at the October election, 1868 ;" in which precinct were you a legal voter, and if you voted at said election, where did you vote?—A. I considered myself a legal voter at either poll in Wayne Township. I voted at the north poll.

Q. Did you not, together with the inspector and other judges of said election, refuse, on said day, to receive all votes from persons residing north of the Wayne County turnpike in said township?

(Contestant objects to said question, as not being germane or relevant to any of his.)

A. I do not remember that we refused to take any votes from voters living north of the Wayne County turnpike ; we only requested them to vote at the north poll.



Q. You will please read your answer to interrogatory seven, and say whether or not there is a gas-burner overhead in the room in which you held the election; and whether or not there is one or more gas-burners, and if more than one gas-burner, how many in the room in which you counted the ballots, and was it not possible, without much inconvenience, to have had a sufficient supply of lamps in the room where the election was held, and say whether the large folding-doors to the room in which the election was held could not have been easily closed, and was there not a stove within, in order for heating the room, and whether you could not have easily so arranged the engine and hose-carriage on one side of the room, and your table, ballot-boxes, and papers, on the other, so that in case of fire and removal of the engine and hose-carriage you would not have been disturbed.—A. I do not know how many gas-burners there are in the house; the only one I saw was on the south side of the room, by the stairway, high up. There may be a gas-burner overhead in the center of the room; but I do not think there is. The burner at the stairway is the only one I saw there that could be used in counting votes. I cannot state exactly how many gas-burners there was in the room in which we counted the votes; I know there was plenty of light. I cannot say positively that the room was lighted with gas. I suppose that we might have got lamps to light the room where the votes were polled; it would have caused a good deal of lost time and trouble; did not know that there was any one authorized to furnish lamps. The large folding doors could have been easily closed. There was a stove in the room. I think the engine and hose-carriage could not have easily been placed at one side of the engine-house, so as to afford room for the board and clerks to count the tickets. It might have been done; but it would have thrown the engine off its proper track on to one side of the house and caused the company some trouble in getting the engine out on an alarm of fire when it was thrown off its proper track. We had no authority from the fire company to run the engine off its proper place.

#### Re-examination :

Q. What was the character of the engine-house at the time in which you held the election; how wide, how long, and how high was the room you then occupied; was the floor paved, flagged, or boarded; were the walls brick or frame? Describe the engine-house fully, and what space the engine and hose-carriage occupied of the room.

(This question objected to by respondent as immaterial, as it was properly belonging to the direct examination and not a proper inquiry on the re-examination.)

A. The engine-house is a brick building, two stories high. The room that we occupied was about eighteen feet wide, and from thirty to forty feet deep. The ceiling, I should think, was fifteen feet high. The floor was board. The hose-carriage and engine occupied the center of the room. There would probably be about five feet space on either side of the engine and hose-carriage. The stove was on the south side of the room about midway. The space between the front door and the engine, with the tongue turned around, would be about twelve feet. I do not pretend to be accurate in the dimensions I have given of the engine-house; I have given the dimensions to the best of my judgment.

JOHN S. LYLE.

#### *Evidence of Judge Lacey.*

MAYOR'S OFFICE, RICHMOND, INDIANA,  
January 15, 1869—10 o'clock a. m.

#### Hearing resumed.

MARTIN M. LACEY, of lawful age, being duly sworn to testify the truth, the whole truth, and nothing but the truth, deposeth as follows:

(The introduction of this witness objected to by respondent.)

Question. State your name, age, and place of residence on the day of the October election, 1868, and whether you were a voter in Wayne Township, Wayne County, Indiana, at said election.—Answer. My name is Martin M. Lacey; my age is thirty-three. I resided in the city of Richmond, in Wayne Township, at that time. I was a legal voter in Wayne Township at that election.

Q. State what position you held (if any) on the election board for the south poll or precinct of Wayne Township, and how you were appointed or elected, as the case may be.—A. I was one of the judges on that day. I was elected on the morning of the election by the citizens at the polls.

Q. State when the poll of said precinct was opened, and where, and who were the judges, inspector, and clerks, and when the said poll was closed.—A. The poll was opened on the morning of the 13th of October, 1868, at the No. 2 engine-house, in the city of Richmond. John S. Lyle and myself were the judges; Samuel W. Lynde was the inspector; Caleb S. Du Hadway and Augustus B. Young were the clerks. The poll was closed at six o'clock p. m., or as near that time as we could get at it.

Q. Examine Exhibit A, in the deposition of Samuel W. Lynde, and state what it is.



when it was made, by whom, and under whose authority. State whether you signed the same, and, if you are acquainted with the other signatures thereon, state whether they are genuine or not.

(Question objected to by respondent.)

A. The document as shown me is the poll-book of the election held on the 13th day of October, 1868, made by Augustus B. Young, one of the clerks. It was made during the day of the election, except the certificate and summing up, which was made the morning after the election, on the 14th day of October, 1868, under the authority of the board, which was all present. I signed the certificate, and saw the balance of the board do the same.

Q. Examine Exhibit B, in the deposition of the said Samuel W. Lynde, and state what it is, when it was made, under whose authority the same was done, and whether the signatures attached to the certificate are genuine.

(Question objected to by respondent.)

A. The document shown me is the tally-sheet of said election. It was made on the evening of the election; my impression is it was made by Mr. Young, under the authority of the board. The signatures to the certificate are genuine. I signed my own name and saw the balance of the board sign theirs.

Q. State whether you acted as one of the members of the board of canvassers for the general election in 1868, of the county of Wayne and State of Indiana, and, if you did, state what township or precinct you represented, and when this was, and where.

(Question objected to by respondent.)

A. I did act as one of the board of canvassers of Wayne County at the general election in 1868. I represented the south precinct or south poll in Wayne Township, Wayne County, Indiana. The date I cannot give; it was within two or three days after the day of election. The board of canvassers met at Centreville, Wayne County, Indiana.

Q. State whether one of the poll-books and tally-sheets of the said south poll or precinct were then presented to the board, and, if so, state if you know where they now are, or in whose care you left them.

(Objected to by the respondent.)

A. I believe they were, in fact I know they were. I do not know where they now are. On the adjournment of the board they were left with the clerk of the said board.

Cross-examination by L. D. STUBBS, esq., attorney for respondent:

Q. State whether you lived north or south of the Wayne County turnpike, on the 13th day of October, 1868.—A. I lived north of the Wayne County turnpike on that day.

Q. State of which precinct of Wayne Township you were a legal voter on said day.—A. I voted at the north precinct.

Q. In which precinct did you reside on said day?—A. I resided in the north precinct, I suppose, as the law is.

Q. Where was the certificate referred to in your answer to direct interrogatory No. 4 made?—A. It was made in the assistant assessor's office.

Q. Where is that office located, on which side of the Wayne County turnpike, whether in the south or north precinct, and how far from engine-house No. 2 of which you have spoken?—A. The office is located on the corner of Main and Marion, on the north side of the pike. It is in the north precinct, and I suppose about six hundred feet from engine-house No. 2.

Q. State how it happened that you made out the certificate at that place and not at engine-house No. 2.—A. Because we went there to count out the votes.

Q. When did you go there?—A. We went there at 6 o'clock of the evening of the 13th day of October, 1868.

Q. State what you first did after going there.—A. We counted the heads of the tickets.

Q. What constituted the heads of the tickets?—A. The candidate for governor on each ticket.

Q. State what was next done after counting the heads of the tickets?—A. The result was then announced by the inspector.

Q. Was there or not any adjournment before the final result of the election was ascertained and announced?—A. There was.

Q. State when, how many, and how long, and for what purpose.—A. We adjourned the first time, I suppose, at about 8 o'clock; could not speak exactly as to that; we adjourned this time about twenty-five minutes, for the purpose of getting supper. The second time we adjourned was near 11 o'clock, for (I should suppose) about twenty minutes, for the purpose of getting some oysters. The final result was announced at about one or two o'clock in the morning. These were all the adjournments had up till the time the final result was announced.

Q. Who announced the final result, and how, and to whom?—A. The inspector, Mr. Lang, announced the final result (by proclaiming it as they do any other election) to the board, as there was not any other person present at that time of night.

Six o'clock p. m., January 15, 1869. Hearing adjourned till 9 o'clock a. m., January 16, 1869.



MAYOR'S OFFICE, RICHMOND, INDIANA,  
January 16, 1869—9 o'clock a. m.

Hearing resumed.

Q. Did he proclaim publicly outside of the room, or in such manner as any person who might be about in the street outside could hear?—A. I do not remember.

Q. State if there was not difficulty in reconciling the tally-sheets, poll-books, and tickets with one another, and if there was not a good deal of counting and arranging the next morning after the election, and after daylight.—A. There was a slight difference in some of the counts for some of the smaller offices made by the clerks. They got too many tallies in counting by fives; I remember of no difference in the tickets and the tally-sheet.

Q. How did you detect that discrepancy?—A. We detected it during the night; I do not remember now just how, it was when we were counting the scratched tickets. We may have left some of them unarranged until next morning by overlooking them.

Q. State if you did not add to or take from the tallies on one or both of the tally-sheets opposite the names of one or both of the candidates for Congress?—A. At no time was there any tallies changed on the tally-sheets for the candidates for Congress, either night or morning, to my knowledge anyhow.

Q. State whether there was or not a discrepancy between the vote as first announced for governor by Samuel W. Lynde, inspector, and as appears on the tally-sheet marked Exhibit B, and the summing up on the poll-book marked Exhibit A, in the deposition of Samuel W. Lynde.—A. I believe there was; Hendrick's vote was some votes short; I do not remember how many, I think it was about twenty; it was either twenty or thirty, it was somewhere there. I will state also that Baker's vote was that much larger, whatever the difference was.

Q. Then the difference in the majority was from fifty to sixty, was it not?

(This question objected to by the contestant as argumentative.)

A. There was some difference; it has got into my mind that the difference was forty-five; I would not be positive as to the numbers.

Q. State whether you could not have canvassed the vote at the place where the election was held.—A. I suppose we might have done so. It would have taken some trouble to get lights and tables. I would like to state in this connection that our instructions were to go to the Library Building by the township trustee, where we always had been going.

Q. State the purpose for which the building you call the engine-house No. 2 is used?—A. It is used for storing one of the fire-engines for the city.

Q. State if there was not plenty of room to put the engine and hose-carriage on one side, and given you sufficient room on the other side, and near a stove, in order for heating, near the gas-light, and so that the engine and hose-carriage could have been removed in case of an alarm of fire, and not have disturbed the board while canvassing the votes.—A. There may be room, I never saw it tried.

Q. Do you know the dimensions of the room; and if so, state what they are.—A. I do not know the dimensions of the room.

Q. State whether or not there was a comfortable room up stairs in said building accessible from the room in which you received the ballots, where you would have been secure from disturbance, and where you would have had plenty of light and conveniences for the business you had to transact.—A. There is a room up stairs, but there is no tables in the room; I went up to see about that myself. This is about as full as I know how to answer that question. It might have suited if there had been any tables in the room. I do not remember whether there was a stove in that room at that season of the year. There is plenty of lights in the room.

Q. State who received the tickets as they were presented by the voters respectively at the election, and who put them in the ballot-box.—A. Mr. Lynde, the inspector, received nearly all of them and put them in the box. I received a few of them while Mr. Lynde was eating his dinner, and may have done so at other times for a few moments at a time.

Q. How many ballot-boxes did you use?—A. Two.

Q. Where did they sit? that is, were both in public, and were or not both used at alternate intervals, or was one used a while and set to one side; if so, when?—A. They sat on a small table in front, next to the door. The first one was used as long as we could get any tickets in it. We then set the other on top of the one that was full, and I think it remained in that position until the polls were closed.

Q. State whether or not you had a registry of voters there, whether or not you checked off the names of persons who voted.—A. We had two copies of a printed registry of all the registered votes of the township, and they were checked as the voters voted.

Q. State whether or not any persons voted whose names were not on said registry, and whether or not they filed any affidavits as to their qualifications to vote in the said south precinct.—A. There were a good many persons voted whose names were not on the registry. They all filed their affidavits as to being voters of the township. I do not remember whether the precinct was specified or not in the affidavit.



Q. Did you or not present a registry checked at said election, or any checked registry with the election returns to the board of canvassers, and did you present said affidavits to said board with the said returns when the returns were canvassed, and did you present any such registry or affidavits to the clerk of the circuit court of Wayne County with the said returns on the said day or on any other day?

(Objection to so much of this question as relates to the affidavits being presented, being irrelevant and not required by law.)

A. I did not. The returns were taken before the board by the township trustee together with the affidavits.

Q. State who took the tickets out of the ballot-box when they were taken out the first time?—A. The ballot-box was placed in the center of the table, when the board proceeded to assort them out in piles of twenty-five, by the heads of the tickets, and when we got four such piles we placed them in piles of hundreds, and so on until they were all counted.

Q. What persons beside the inspector and judges were present in the room, if any?—A. Mr. Du Hadway and Mr. Young, the clerks, and Mr. Ross and Mr. McGirr. Mr. McGirr was there part of the time only; he came there when we were about half through.

Q. State whether any or all, and if any, who of those persons assisted in taking out the tickets, and if any, who assisted in assorting and in counting the same?—A. Mr. Lynde, the inspector, Mr. Lyle and myself as judges. Mr. Du Hadway and Mr. Young, the clerks, took them out of the box. These were all who assisted in taking out and assorting. They were then counted after they were assorted by Mr. Lynde, and a tally or account taken of them by the clerks.

Q. Did the clerks on the first counting enter tallies on the tally-sheets of the vote for governor opposite to the respective names of the candidates for governor? if not, tell how they tallied, and how they kept the account.—A. I do not think there was any account of the first count put on the tally-sheet. The figures of the amount was put on a piece of paper and handed to the inspector by the clerks.

Q. State how they tallied, and how they kept their account.—A. The inspector counted them as they were assorted by the vote for governor, and called out the numbers to the clerks, which numbers were by the clerks placed on a piece of paper, and the account or tally was then presented to the inspector by the clerks.

Q. Did the inspector count each ticket himself, or did he take the bunches of one hundred or twenty-five each and ascertain the result in that way as to the number of votes for governor on first counting referred to?—A. I think he took them in bunches; I do not remember that he looked over them.

Q. State whether or not you kept the democratic tickets separated from the republican tickets after the heads of the tickets had been counted, or whether you mingled them together again.—A. They were placed back in the ballot-boxes just as they were counted. I do not remember whether they were kept entirely separate or not; that is, whether all the democratic tickets were put into one box and the republican tickets in the other. I am not positive as to that.

Q. State whether or not, at the time you separated the republican from the democratic tickets, you separated republican tickets having Mr. Reid's name on from the republican tickets having Mr. Julian's name on.—A. We did not.

Q. State whether the votes for any other candidates and for governor were counted previously to commencing to make the tally-sheet, and before the announcement first made by Mr. Lynde.—A. There was not any votes counted for any other candidates except governors.

Q. State whether all the names printed or written on each ticket, and the office designated to be filled by each of the persons whose names appeared on said tickets, were read aloud by the inspector or any other person at the final canvass, and if by any other person, by whom.—A. The inspector first began by counting by fives, by saying, for governor, Baker or Hendricks, as the case may have been, five votes, and so on through the whole ticket. After a while he counted by tens in like manner, until all the unsratched tickets were counted. No other parties called off the tickets except the inspector.

Q. Do I then understand from you that only every fifth or tenth ticket was read?

(Objected to by contestant as being argumentative.)

A. Well, I suppose that in that way five or ten of them were read at a time.

Q. Did or not the inspector take the tickets out of the ballot-box on the second or final canvass, or did some other person take out and assort for him, or assist him in doing so?—A. I do not remember whether he took them out and laid them on the table himself or not. Myself and Major Lyle both assorted the straight tickets from the scratched ones in piles of fives and tens, and handed them to the inspector as he needed them.

Q. What did the inspector do with the tickets after he read to the clerks and directed as you stated?—A. He handed them across the table to Mr. Ross, and he strung them.



Q. State on what floor of the building the room in which you counted the tickets is situated?—A. On the second floor.

Q. State whether or not it communicates with any other room or rooms from which or through which persons could get into the same?—A. There are two other doors which lead into other rooms, and persons might enter the room through those doors if they were not fastened.

Q. State where you put the tickets on your first adjournment?—A. We put them in the ballot-boxes.

Q. State what you did with the ballot-boxes at said adjournment?—A. We placed one on top of the other on the table where we had been counting. Mr. Lynde locked the boxes and put the keys in his pocket.

Q. State whether or not all access to said room was cut off, and if so, by whom and how?—A. The doors leading into other rooms were bolted on the inside. I believe we all superintended that matter. The outer door I locked myself and carried the key.

Q. Where were you during the adjournment?—A. Major Lyle and myself went to Mr. Jordan's and got some oysters; we then returned to the stairway that leads up to the room in front, and found Mr. Lynde and Mr. Young there when we returned; when the balance came we went into the room.

Q. Did you retain the possession of the key to said door all the time of said adjournment?—A. I did.

Q. Had or not any other person or persons a key or keys to said door?—A. Mr. Bragg, the assistant assessor, had a key to the door of said room at that time. I know of no other persons having keys to said door at that time.

Q. Did any person or persons enter said room during said adjournment and before the return of the whole board, to your knowledge, or have you any cause to believe that any person or persons entered said room?—A. No person entered the room before the board all went in together, that I have any knowledge of, and I have no reason to believe that any person did.

Q. State where you put the tickets on your second adjournment?—A. They were put in the boxes and locked up.

Q. What did you do with the ballot-boxes, and who carried the keys to the same?—A. They were placed on the table as before, and Mr. Lynde carried the keys.

Q. Was or not the room locked and all access cut off, and if so, who carried the key to the room door?—A. The room was locked and the other doors bolted same as before, and I carried the key to the front door.

Q. Did you retain possession of said key all the time of said adjournment?—A. I did.

Q. Did any person or persons enter said room during said adjournment, and before the return of the whole board, to your knowledge, and have you any reason to believe that any person or persons entered said room during said last adjournment?—A. No person entered the room to my knowledge. The board all remained together during the entire adjournment, and I have no reason to believe that any person entered said room during said adjournment.

Q. Was any change at any time in any manner made in said tickets, either by substituting other tickets in place of those voted, or by erasure or interlineations, or erasures alone, or by any other method?—A. There was nothing of the kind done that I know anything about.

Q. Was, or was there not, any manipulation of tickets at the time of voting, by means of which tickets not voted were substituted for those that were voted?—A. There was nothing of the kind done that I know anything about.

Q. Was there or not any manipulation of tickets at the time the same were taken out of the ballot-boxes, or at the time the same were assorted and counted, or at any time or in any manner, either at or before either the first or second counting or canvassing, by means of which tickets not voted on the 13th day of October, 1868, at the south poll aforesaid, were substituted for those that had been?—A. I do not know of anything of the kind.

Q. Did you not tell Nimrod H. Johnson, at Centreville, Wayne County, Indiana, on the day the board of canvassers met at that place, that alterations of the state of the vote in the south precinct aforesaid had been made so as to produce a different result?—A. I told Mr. Johnson on that day that on the final count the democratic vote, I believe, was some forty-five short of the first announcement; I gave him no reason for it, I knew no cause for it; I did not tell Mr. Johnson that there had been any change made.

Q. Did you not on said day, at said place, tell Thomas W. Bennett that there had been alterations made in the state of the vote in said precinct so as to produce a different result?—A. I may have told Mr. Bennett the same as I told Mr. Johnson. I do not know as to that. Whenever I spoke of the matter it was with reference to the change from the first and second announcement.

Q. Did you not tell John H. Topp the same thing at the same time and place?—A. I do not know any better way to answer that than to repeat my last answer. I told no one that any change had been made to change the result, to my knowledge.



Q. I will ask you if you did not tell the same, that is, that there had been alterations made of the state of the vote at the south poll or precinct aforesaid so as to produce a different result, to Nimrod H. Johnson, John Yargan, William C. Jeffries, Harmon B. Payne, Charles Line, James J. Jordan, Philon F. Wiggins, Alfred Lulledge, Thomas W. Bennett, and Orden Ferry, or any or either of them, collectively or individually, in the city of Richmond, Wayne County, Indiana, on either the thirteenth, fourteenth, fifteenth, or sixteenth days of October, 1868?—A. Some of them I never spoke to about it in my life in any shape or form. I may have said to some of them that there was a change in the vote from the first announcement and the final result; I never told them as to how it was made, or that I knew in what way it was done. I may have told a hundred people the same thing for anything that I know; I know there was no secret about it; I did not tell them or either of them what is charged in the question.

Q. Did you not have a conversation with General Thomas W. Bennett, about stuffing the ballot-box; and if so, when was it and where was it, and what did you say that others were going to do, or that you were going to do yourself?

(Contestant objects to the question as one in which the witness is not bound to answer or convict himself of crime or an intent to commit a crime.)

(Witness waives the privilege and answers the question.)

A. I had no such conversation with him.

Q. Don't you know that there was an arrangement made before the election to cheat Julian at the south poll, between you and other parties, and that you were selected to assist in that work, and state what the arrangement was, if any, and say who the parties were?

(The contestant objects to this question as one in which the witness is not bound to answer or convict himself of crime or intent to commit crime, and not germane to any question asked by the contestant.)

(Witness waives privilege and answers question.)

A. I know of no arrangement having been made to cheat Julian at the south poll; I was proposed and elected as one of the judges for said south poll by Julian's friends.

Q. By what means do you know that you were elected by his friends?—A. For the reason, as I was told on the day before by some of his friends, that they wanted me to act as one of the judges on that day.

Reexamined:

Q. State whether the number of votes given to Hendricks and Baker respectively, and the majority struck between them, when the first announcement was made of the result of the poll by the inspector, were the true numbers as found by the tickets voted, or were the true numbers found on counting and announcing the final result?

(This question objected to as asking for an opinion and not for facts, and as being argumentative.)

A. The error was in the first count; the last count was correct.

MARTIN M. LACY.

WILLIAM PARRY, of lawful age, being first duly affirmed to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

(Respondent objects to the examination of this witness.)

Question. State what is your name, age, and where you resided at the time of the general election in 1868, of the State of Indiana.—Answer. My name is William Parry; my age is fifty-eight; I resided in the northern precinct Wayne Township, Wayne County, Indiana, at the time of the general election in October, 1868, of the State of Indiana.

Q. State what office you held, if any, in Wayne Township, Wayne County, Indiana, on the day of the general election in October, 1868, and whether you hold the same now or not.—A. I held the office of township trustee on that day, and still hold the same.

Q. State whether documents purporting to be one set of the poll-books and tally-sheets of the said general election of 1868, of the south poll or precinct of Wayne Township, Wayne County, Indiana, were deposited in your office as such township trustee; if so, examine Exhibits A and B, in the deposition of Samuel W. Lynde, and say whether they are the same documents or not.

(This question was objected to by respondent.)

A. The documents now shown me were deposited in my office, and they are the same as those shown me marked Exhibits A and B, in the deposition of Samuel W. Lynde.

Q. State whether you have certified copies of these documents, marked A and B, in your possession; and if so, please produce them for the purpose of making them exhibits in this proceeding.—A. I have, and now present them as certified copies of Exhibits A and B, and marked Exhibits D and E.

(Question objected to by respondent.)

WILLIAM PARRY,  
Township Trustee.



The contestee, not contending that any *direct* fraud has been proven by him against any one, asserts that, as *one* of the *badges* of fraud, he has proven by the *oral* testimony of over 500 witnesses that this number of ballots were actually voted for him, and that, by the evidence of some 40 more persons, they either voted for him or *intended* to do so; and hence the ballots in the ballot-box must have been changed by some other person or persons, as there were only 475 votes returned for him by the judges, instead of over 500 votes, as should have been; but against the *oral* testimony of these witnesses there is the evidence of the analyzation of the actual tickets voted, and a complete re-count of their number, made in the presence of the contestee's counsel, sworn to by the inspector of the south poll as being true, and the tickets *voted* and *counted* at the election; and this testimony is confirmed by the township trustee and others, who had charge of the tickets from the close of the election until they were counted by the contestant, which analyzation shows 670 votes for the contestant instead of 676, and 479 votes for the contestee instead of 475 votes, with 32 ballots scratched, or which had no name on them; 31 of which appeared to be republican tickets and 1 a democratic; making, in all, 1,181 tickets instead of 1,183, the number returned by the judges, and also that which the poll-book shows.

I insert the evidence of the inspector and township trustee in proof of my opinion.

#### EVIDENCE OF ANALYZATION OF TICKETS.

SAMUEL W. LYNDE, of lawful age, being first duly affirmed according to law, deposes as follows:

Question. State what position, if any, you held on the election board of the south poll or precinct in Richmond, Wayne County, at the State election of 1868; and whether you acted in that position at said election.—Answer. I was inspector of the board of election for the south poll or precinct in Richmond, Wayne County, Indiana, and acted as such on the day of said election.

Q. State what was done with the tickets voted at said poll, after the result of the same had been ascertained by the board and the returns of the election made.—A. I deposited them in the office of the township trustee, William Parry, the next day after the election.

Q. State whether you have seen and examined the tickets voted at said poll, since the election; if so, state where you found them; and if you know them to be the same tickets deposited by you; and what number of tickets did you find there as representing that poll?—A. I have seen and examined the tickets that I suppose were voted at that poll. I would not swear that they were the same tickets voted at that poll at that time, but I think they are the same. I found them at the office of William Parry, township trustee, and believe them to be the same tickets that I deposited with him; and the number was 1,181.

Q. State the result of your examination in detail: where was it made, and in whose presence; and state how the vote ranged for Congress, as appears on the tickets so found and examined by you; or, in other words, analyze the vote so given for the several candidates for Congress as found on the said tickets, and report the same as so found.—A. The examination was made at the mayor's office, in the city of Richmond, on the 8th day of April, 1869, in the presence of Augustus B. Young, one of the clerks of said election, Lewis D. Stubbs, esq., attorney for the respondent, and John S. Reid. The analyzation which I made of the tickets on the vote for congressman is as follows: The vote for John S. Reid, on the clear democratic tickets, numbered 507; on the republican tickets, with Reid's name written on, 46; on the republican tickets, with John S. Reid's name printed on, 110; on scratched democratic tickets, with Reid's name left unscratched, 7; one democratic ticket blank. The vote of Mr. Julian stood thus: Clear republican tickets, for Julian, 470; on scratched republican tickets, with Mr. Julian's name left on, 9; republican tickets, with Julian's name scratched, and no name inserted, 31.

Q. State whether you examined the aforesaid tickets at any time since the said election, or if you know of any other person having done so.—A. I never examined the aforesaid tickets since the election, until the examination I made to-day. I heard that other people had examined the tickets, but have no personal knowledge of the fact.



Cross-examination by L. D. STUBBS, esq., attorney for respondent :

Q. State what portion of the time Lewis D. Stubbs was present at the examination to-day, and what part he took in the same ; also what part of the time Augustus B. Young and John S. Reid were present, and what part they took in the same.—A. Lewis D. Stubbs was not present but a very little part of the time, some half hour ; he checked or recounted the Julian tickets. Augustus B. Young was present two or three hours ; he assisted in assorting and counting out tickets for analyzation. John S. Reid was present about as long as Mr. Stubbs, or a little longer, looking over and examining the tickets to see that the count was correct.

Q. State whether you yourself counted all the tickets, and are certain your statement is correct.—A. I counted all the tickets, and think my statement is correct.

Q. State what you make the total number of votes for John S. Reid to be ; and state what you make the total number of votes for George W. Julian to be.—A. I make the total vote for John S. Reid to be 670, and the total vote for George W. Julian, 479.

S. W. LYNDE.

WILLIAM PARRY, of lawful age, being first duly affirmed according to law, deposes as follows :

Question. State what office, if any, you held at the State election of October, 1868, in Wayne Township, Wayne County, Indiana.—Answer. I held the office of township trustee of Wayne Township, at the time of said election, and still hold said office.

Q. State where you keep your said office ; and where you kept it at said election ; and whether the tickets purported to have been voted at the south poll or precinct of Richmond at that election were left in your care and custody as such trustee.—A. The office of township trustee was in the city of Richmond at the time of said election, and is still kept in said city ; and the tickets purported to have been voted at the south poll or precinct, in the city of Richmond, at that election, were deposited with me for safe-keeping by Samuel W. Lynde, the inspector of said south poll or precinct.

Q. State whether any person examined said tickets, while in your care and custody, so as to obtain a knowledge of the votes given thereon ; if so, who it was, and when the same was done.—A. Lewis D. Stubbs and Judge Perry examined the said tickets a few days after the election. I think Edward G. Vaughn also examined the said tickets, but I cannot say at what time it was done. I think Vaughn examined the tickets before Lewis D. Stubbs and Judge Perry did. I am not positive.

Q. State what is the political character of the several gentlemen named by you as having examined the tickets ; and whether they were the political friends of Mr. Julian or Mr. Reid.—A. They were what we call republicans, and were the friends of Mr. Julian politically.

Q. State if you know of any change having been made in the number of the tickets so left with you, or in the names of the candidates so printed or written thereon, since the same were deposited in your office.—A. I do not.

WILLIAM PARRY.

I can see no way by which I can with any propriety, or by any rule of law, reject evidence so palpably correct in itself, and which, under ordinary circumstances, would in all courts of law be deemed and held as the best and highest evidence, nor can I reject the testimony of the inspector and judges, who unhesitatingly swear to the correctness of the ballots, returns, and summing up of the votes, and adopt the *oral* testimony of men, many of whom were not voters themselves at that precinct, and several of whom must be evidently mistaken, when they swear to having given some fifteen men tickets with the name of the contestee on them, and of seeing them vote them, the same identical tickets, which, if actually done, they must have voted some two or three times each. We refer to the evidence of Geo. F. Kramer, at page 182, and of David Hoerner, at page 195, which contain within themselves their own refutation.

The poll-books show no such voting, and the tickets deny that such occurred ; hence I think that they were mistaken, and I am satisfied there is no material error, if any, in the returns of the judges.

Such mode and manner of making evidence after an election I must condemn, and stand by the old rule, that when the returns of the board are impeached the highest and best evidence only can be received, for nothing but the most unequivocal evidence can destroy the credit of



official returns. (See *Littel vs. Robbins*, 31st Cong., page 138, and *Blair vs. Barrett*, Election Cases of 1834 and 1865; 27 Ind. Rep., 191.)

Having examined the question of fraud very carefully, I can see nothing in the evidence which will warrant me in rejecting the south poll of Richmond.

Under this view of the case I sustain the returns of the judges of the polls, north and south, of that city, and allow the contestee the privilege of purging the south poll from all fraudulent and spurious tickets, if there may be any fraud, and accrediting to him the full number of tickets which he proves were voted for him, thus adopting the rule as laid down in 27 Indiana Reports, page 191, by the Supreme Court, and referred to by both of the gentlemen as being the law of that State.

#### NORTH PRECINCT.

I do not deem it necessary to go into an examination of the irregularities alleged by the contestant as to the northern precinct of Wayne Township, for the reason that, if they were found to be true, I would, for the same reasons, and by the application of the same law whereby I reinstate the southern poll, retain the northern poll.

I have examined the evidence fairly and fully, and think that almost every irregularity which was committed at the one poll was committed at the other; but in neither do I find enough errors or irregularities to sustain me in rejecting them, and disfranchising some three thousand voters, who, from all the evidence, appear to have acted and voted in good faith, and were not parties to any of the acts complained of, and ought not to be made to suffer for omissions or acts of others. The vote at each of these following places was large, the election orderly, and the removal of the ballot-boxes and ballots was the result of necessity, and not done through or by any fraudulent means, so far as I can discover from the evidence, or for any fraudulent purpose whatever.

#### CLERICAL ERRORS COMPLAINED OF BY MR. REID.

I find from the evidence that the clerk of Union County, in certifying the vote for congressman from that county, committed a clerical error by which ten votes were returned short of the proper number for Mr. Reid, and that from the evidence of the inspector and one of the judges of Clay Township, in Wayne County, an error of eleven votes was made on the final returns of that township for Mr. Reid, to which he was entitled, and that two votes were in like manner rejected at Washington Township, in said county, to which he was entitled, making in all an error of twenty-three votes, which I have allowed him, as clearly proven.

#### NUMBER OF VOTES PROVED ORALLY BY MR. JULIAN.

From a table which Mr. Julian has carefully prepared from the evidence, and copied into his brief in this case, I find that he has gathered the names of five hundred and eight persons, who swear or affirm that they voted for him at said election for Congress; but in checking off these names in his table, in the light of the evidence and the poll-book, which I have very carefully examined, I find the names of six persons who evidently must be duplicates of each other, they being almost of the same age, and in some instances exactly so, living at the same place, and whose names are not found twice on the poll-book; others had been examined, and their testimony taken outside of the time allowed by law, and



after the protest of the contestant had been entered by the notary; one who signs the wrong name, but was not sworn, and one who swore that he only supposed that his ticket had Julian's name on it, and one whose residence was in the north precinct, making in all 12 votes, which we have deducted from the 508 votes claimed and counted by Mr. Julian in his brief, allowing him 496 votes instead of 475, as returned for him by the election board of the south poll; we deduct from the vote of Mr. Reid 2 votes, which Mr. Julian shows were voted for him in the south poll, when they should have been voted at the north.

Mr. Julian has also pretty carefully analyzed the evidence of the persons sworn by him whom he supposed had voted for him, and, although I have found several errors in the tables, as classified by him, yet, as I cannot admit this *kind* of testimony to control the official returns of the judges of election, especially when sustained by the analyzation of the tickets voted, as has been done in this case, I did not go into detail with them as I did with those who swear that they actually know that they voted for him. I made, however, a general examination of the whole evidence attempting to sustain this class of voters, and those who could *not* swear or affirm that they voted for Mr. Julian, but who thought they did or intended to do it; or who were republicans, and by virtue of this political relation ought to have voted for Mr. Julian, say, all this class of witnesses and voters, I was under the necessity of rejecting. Many of the witnesses, I think, must be mistaken—I mean those who swear that they know how other men voted, because they gave them tickets, and saw them vote, or were told how they voted. Such testimony, as is well said by the books, is too vague, indefinite, uncertain, and not the best evidence; and, in many cases, only hearsay evidence is given, which cannot be admitted over the well-established rules of evidence. As in the cases of Krammer and Horner, I find others coming and swearing at one place that they did not know how any other person voted, while afterward they swear they know of several. Such evidence as this, I think, is not only in itself valueless, but dangerous to be admitted as a precedent, against which no candidate would be safe; and the official returns would be rendered almost worthless in any contest.

I present the following tables, as collated from the evidence, under any one of which Mr. Reid would be entitled to his seat; and when all these propositions are united, we consider the claim as conclusively and unanswerably established.

#### NUMBER OF VOTES FROM OFFICIAL RETURNS.

Table No. 1.

	Julian.	Reid.
Aggregate vote, as officially reported as above . . . . .	13, 413	13, 297
Add the vote of the south precinct, (see tabular statement) . . . . .	475	676
Total . . . . .	13, 888	13, 973
Deduct Mr. Julian's vote from Mr. Reid's vote . . . . .		13, 888
Majority for Mr. Reid . . . . .		85



*Table No. 2.—Analyzed number of votes.*

Mr. Reid obtained from the secretary of state .....	13, 297
Number of votes given him at the south poll in Richmond, as per analyzation .....	670
	<hr/> 13, 967
Mr. Julian obtained from secretary of state .....	13, 413
Number of votes given him at the south poll in Rich- mond, as per analyzation .....	479
	<hr/> 13, 892
Majority for Mr. Reid .....	<hr/> 75

*Table No. 3.*

Number of votes from official returns, clerical errors, and oral exami- nation of the south poll:	
Mr. Reid obtained from the secretary of state, as official .....	13, 297
Number of votes officially returned him at the south poll of Richmond .....	676
Clerical errors at Union and Wayne Counties .....	24
	<hr/> 13, 996
Deduct illegal votes at south poll .....	2
	<hr/> 13, 994
Mr. Julian received from the secretary of state, as offi- cial .....	13, 413
Number of votes allowed, as proven by him orally, as of persons who voted for him at the south poll .....	496
	<hr/> 13, 909
Majority for Mr. Reid .....	<hr/> 85

Having examined carefully the report of the majority of the committee, I extremely regret that I cannot agree with them in many of their conclusions, or in what they in some instances assert as being the facts and the law governing this case; nor do I believe that the evidence sustains the finding of the committee on the material issue made by and between the contestant and contestee, as found in their notice of contest and answer thereto, especially if the committee is to be governed by the resolution of the House in directing that all contested election cases are to be tried as a judicial proceeding, and that the law of the State from which the contest arises shall be the law governing the adjudication thereof, both of which the majority of the committee has wholly disregarded in the adjudication of this case.

1. I therefore object and dissent to so much of the said report of the majority of this committee which asserts and finds that there is no evidence of the irregularities and informalities charged by the contestant against the official acts of the members of the north precinct or poll at Richmond, and say, in reply, that every allegation contained in the specification of the contestant is fully proved and sustained by the evidence; and assert that if the north poll or precinct at Richmond is



to be retained and counted for the contestee, that the south poll or precinct thereof ought to be retained and counted for the contestant, which evidence is now here submitted in proof of this objection.

WILLIAM PARRY, of lawful age, being first duly affirmed according to law, deposes as follows:

Question. State your name, age, and place of residence at the time of the general election held in Wayne Township, Wayne County, Indiana, in October, 1868, and whether you were a legal voter at that election.—Answer. My name is William Parry; my age is fifty-eight; I resided in Wayne Township, two miles northwest of Richmond, at the time of said election, and was a legal voter in Wayne Township at that time.

Q. State what position you held, if any, during said election in said township, and whether you acted as such during said election.—A. I was township trustee, and acted as such during said election.

Q. State whether or not a poll was opened and an election held at what is called the north poll or precinct, in said township, in October, 1868; and, if so, who acted as inspector, judges, and clerks thereof.—A. A poll was opened and an election held in said north precinct, at engine-house No. 3; I was inspector; E. G. Vaughn and Nathan Doane were judges; Andrew T. Scott and Hugh Wiggins were the clerks.

Q. State, if you know, whether or not said election was held under a general registry for the whole township, or a special registry for the said north precinct.—A. The election was held under the general registry; no special registry for said north precinct was made.

Q. State, if you know, the names of the registers, where it was made, by whom, and when.—A. It was made principally by myself, Samuel W. Lynde, and Fred. Rosa; M. M. Lacey helped a part of the time; it was made at my office, in the city of Richmond; it was made between the first day of the 8th month, commonly called August, and the day of the general election, in October, 1868.

Q. State when the poll was opened and closed on the day of election, and whether or not the board counted the tickets at the place of voting, or removed to another and different place before doing so; state all about it.—A. The poll was opened at 8 o'clock a. m., and closed at 6 o'clock p. m.; we counted the tickets, so far as governor, lieutenant governor, and congressman were concerned, but not the other officers, and announced the result; we then moved up stairs and counted all the votes.

Q. State in what way you moved from this place of voting to the room where you counted the tickets, and state the cause, if you have any, why this removal was made.—A. My impression is that we went through the side door of the room into the stairway, and then up stairs, but do not recollect positively whether we went that way, or went out at the front door into the street, then up the stairway; the removal was made to secure more light, and for comfort and convenience.

Q. State, if you know, who took charge of and carried the ballots, ballot-boxes, and poll-books, and whether the boxes were locked or not; and, if locked, who kept the keys of them during the time of said removal.—A. I do not remember who took charge of the ballot-box, nor do I remember whether the ballot-box was locked or not at the time of the removal.

Q. State, if you remember, whether any adjournment or recess was taken by the board before the final count was made and announced of all the votes cast at said election; if so, state when it was, and how long was the time of said adjournment or recess.—A. There was a little recess; don't think there was any adjournment; after we moved up stairs we took a recess of about from thirty to sixty minutes, for the purpose of getting something to eat; I went out and ordered supper for the board, and had it brought up into the room, and when we ate that we went to work and finished up.

Q. State, if you remember, who took charge of the ballot-box and ballots and poll-books during said recess and while you were at supper; by whom were they kept, and state whether any other person or persons were in the room besides the board during said recess.—A. I do not know who took charge of the ballot-box and ballots during my absence from the room; after I returned, I again took charge of the box, and kept it during the time of eating supper, and until the final count was made; I think Thomas McGin, and John H. Moormann, and some three or four other persons went up stairs with us at the time of removal, the names of whom I cannot remember; they remained in the room but a few minutes except Thomas McGin, who remained during the whole time we were at supper, and two boys who brought up the supper.

Q. State, if you remember, whether any person helped you to assort the ballots, and how they were assorted before and for the final count?—A. There was no person helped to assort the ballots on the final count, but the board.

Q. State, if you remember, whether the ballots were assorted and counted singly or in bunches, who read them off to the clerks, and in what manner this was done?—A. They were assorted into bunches of from five to fifty; the tickets or ballots were all assorted, each political party to itself, and all scratched ballots to themselves; they



were then counted singly and given to the clerks in bunches of from five to fifty; I read them off to the clerks, not singly but in bunches, and they tallied them by fives.

Q. State when it was that you made publication of the final result, how this was done and where, and who were present?—A. I think we made publication of the final result about twelve o'clock at night; the announcement was made in the room where we counted the ballots to the board, as there was no other persons about at that hour of the night.

Q. State, if you remember, what was the number of votes announced by you at that poll in favor of Mr. Julian, and what was the number announced for John S. Reid, at the time above referred to?—A. The number of the votes announced at the north poll for George W. Julian was 1,112, and the number announced for John S. Reid was 427, to the best of my recollection.

Cross-examination by H. B. PAYNE, esq., attorney for respondent :

Q. State whether the poll-books and the ballots at said north precinct were compared, and also state whether or not they agreed as to numbers.—A. They were compared, and agreed as to numbers.

Q. State if either of the judges of said election read over the ballots after you had read them before they were strung.—A. They did not read them over after I had read them; I believe both of the judges read them over before I did.

Q. Was there any other recess or adjournment had or made by the board than the one you refer to when you ate your supper?

(This question objected to by contestant.)

A. There was not any.

WILLIAM PARRY.

HUGH R. WIGGINS, of lawful age, being first duly sworn according to law, deposes as follows :

Question. State your name, age, and place of residence at the time of the general election in 1868.—Answer. My name is Hugh R. Wiggins; my age is twenty-two; I resided in the city of Richmond, Indiana, in the north precinct of Wayne Township, at the time of said election.

Q. State what position you held, if any, on the election board at the October election of 1868, for said precinct, and whether you acted in that position during said election.—A. I was one of the clerks, and acted as such at said election.

Q. State where the election was held, and who were the inspector, judges, and clerks.

A. The election was held in the lower room of the No. 3 engine-house; William Parry was inspector, Nathan Doane and Edward G. Vaughan were the judges, Andrew F. Scott and myself were the clerks.

Q. State if you know what was the political character or reputation of the members of the board.—A. They were all republicans except Mr. Scott, who was a democrat.

Q. State when the poll was closed, and whether any announcement was made by the board of the result of the votes of any of the candidates before the final count was made; if so, state what was done and by whom.—A. The poll was closed at 6 o'clock p. m. The result of the votes of the heads of the tickets, as far as the governors and congressmen were concerned, was announced by William Parry, a short time after the polls were closed, and after the board had removed from the lower to the upper room in the engine-house.

Q. State, if you remember, what occurred after this was done, and whether the board removed from the place where the ballots were cast to another and different place; and if so, who took charge of the ballot-box and poll-books during the time of the removal. (This question withdrawn for the present.)

Q. State, if you remember, who assorted and selected the ballots in order to find the votes for the governors and congressmen, and how the same was done.—A. They were selected and assorted by the board, assisted by the clerks and Thomas McGin and John H. Moormann. William Parry took the ballots out of the box and laid them on the table; they were then assorted by the persons aforesaid, separating the republican from democratic tickets. After all the votes had thus been assorted, each man engaged in the assorting reported to William Parry the number each party got, of the number of tickets he assorted, and the result was thus made up.

Q. State, if you remember, whether any recess was taken by the board after this counting and announcement; if so, state for what purpose and how long the recess was had.—A. We had a recess for about half an hour for supper.

Q. State in what manner the ballots were arranged for the final count, how they were assorted, if an assortment was made, and how read to the clerks in order to enable them to make the tallies.—A. They were examined by the judges and then handed to the inspector, who re-examined them, and read them to the clerks in bunches of from five to fifty.

Q. State, if you remember, at what time the final result was announced, by whom this was done and at what place, and what was the numbers respectively announced



for Mr. Julian and Mr. Reid.—A. The final count was made and the result announced about midnight. The result was announced in the room where the counting was done. I believe there were no other persons except the board and clerks in the room at the time. Mr. Julian's vote was about eleven hundred; the vote for Mr. Reid I do not remember.

HUGH R. WIGGINGS.

JANUARY 27, 1869—6 o'clock p. m.

Hearing adjourned till nine o'clock a. m. of January 28, 1869.

JANUARY 28, 1869—9 o'clock a. m.

Hearing resumed.

JOHN H. MOORMANN, of lawful age, being first duly sworn according to law, deposes as follows:

Question. State your name, age, and place of residence at the time of the general election in Indiana, in October, 1868.—Answer. My name is John H. Moormann; my age is fifty-three; I resided in the city of Richmond, in what is called the north precinct, in Wayne Township, Wayne County, Indiana.

Q. State whether you were acquainted with the internal arrangement of engine-house No. 3 in the city of Richmond, and whether a poll was opened at said engine-house at the October election, 1868.—A. I am acquainted with the internal arrangement of engine-house No. 3 in the city of Richmond. I am one of the trustees of the house in connection with fire company No. 3. A poll was opened and an election held on the lower floor of said engine-house, in the month of October, 1868, at which I was present part of the time.

Q. State in what part of the building were the votes cast, and when the poll was closed during said election, and whether any removal was made by the board of the ballot-box and poll-books from said place, to another and different one before the final count.—A. The votes were cast in the lower part of the building. The poll was closed about six o'clock p. m. The board removed the ballot-box and poll-books to another and different place before the final count was made, or before any count was made at all.

Q. State, if you remember, to what place this removal was made, who were present, and who assisted if any one did, in making this removal, and when the same was done.—A. The removal was made to the upper room of said engine-house. E. D. Palmer, Thomas McGin, and several other persons outside of the board were present and assisted at the removal. The tables and other apparatus were carried out of the front door of the engine-house onto the sidewalk and then up the stairway to the upper room.

Q. State, if you remember, whether the ballots were counted before or after said removal; and how they were counted, by whom, and who was present when the same was done.—A. The ballots were not counted at all until after the removal was made from the lower to the upper room. William Parry, the inspector, took the ballots out of the ballot-box and distributed them in bunches to some eight or ten persons, including the board and clerks, who were stationed around the table, myself being one of the number. We assorted the ballots by their heads for governors and congressmen, laying them in bunches, counted them up, and reported them to the inspector, taking care to keep all scratched tickets in bunches to themselves; and the inspector made the summing up of the whole and announced the vote received by each party, or particular candidate for governor and congressman.

Q. State whether, or not, any publication was made by the board of the result of this count for governor and congressmen, before the final count was made.—A. Yes, publication of this count was made by the inspector soon after the count for governor and congressman was made.

Q. State, if you remember, whether the board took any recess before the final count was made; if they did, state how long this recess was, and who took charge of the ballots and ballot-box during said time.—A. Soon after the announcement of the publication by the inspector, he placed the ballots into the ballot-box or boxes. I think there were three ballot-boxes, and that the inspector put the republican straight tickets into one box, the straight democratic tickets into another, and the scratched tickets into the third. After this was done the subject of supper came up, and William Parry, the inspector, and myself went down out of the room. Parry went for the purpose of getting supper for the board, and I did not go back again, and consequently know nothing more about what occurred in the room after that time.

Q. State, if you remember, whether, in making the assortment of the tickets and the count thereof, you found any republican ones with Reid's name printed thereon instead of Julian's; if so, state how many of these were found and reported to the inspector.—A. I do not remember the exact number; from the best of my recollection it was forty or forty-one.

JOHN H. MOORMAN.



MARTIN M. LACEY, of lawful age, being first duly sworn according to law, deposes as follows:

Question. State your name, age, and place of residence at the time of the general election in Indiana, in October, 1868.—Answer. My name is Martin M. Lacey; my age is thirty-three years; I resided in the city of Richmond, Wayne Township, Wayne County, Indiana, at that time.

Q. State whether you was appointed and acted as one of the registers for Wayne Township, at the October election in 1868; and, if so, who were your associate registers?—A. I was appointed one of the board of registers for Wayne Township for said election. Samuel W. Lynde and F. Rosa were my associates in making said registry.

Q. State whether you assisted in making out a registry of the voters of said township for that year; if so, state where said registry was made, and whether it embraced the whole township, or only one of the precincts thereof.—A. I did assist in making a registry for said township for said October election. The registry was made at the office of William Parry, the township trustee. It was made for the whole township, and was not for one precinct only.

Q. State whether or not, at the time of said appointment as such register, you was a freeholder of said township; and, if not, whether you became a freeholder as such register during your term of service.—A. I was not a freeholder in the township at the time of said appointment, nor was I one at the time the registry was made, or during my time of service as such register.

MARTIN M. LACEY.

EDWARD G. VAUGHAN, of lawful age, being first duly affirmed according to law to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

Question. State your name, age, and place of residence at the time of the October election, 1868, in the State of Indiana.—Answer. My name is Edward G. Vaughan; my age is forty-four; I resided in the city of Richmond, in Wayne Township, in what is called the northern precinct, at the time of the October election in 1868.

Q. State what position, if any, you held during the said October election in said township, and whether you acted in that position at said election.—A. I was one of the judges at said election, and acted as such during said election.

Q. State whether an election was held in said precinct, and when the poll closed for receiving votes; in what house was that held, and whether any removal from that place to another was made before the votes were counted.—A. There was an election held at engine-house No. 3, in said precinct. The poll was closed about six o'clock p. m. We removed, before the votes were counted, from the lower room to the second story of the building.

Q. State, if you remember, what the board did after the removal to the upper room, and whether any count was there taken of the votes cast; and, if so, who assisted besides the board, if any person or persons did.—A. The first thing the board did after the removal to the second floor was to arrange the tables for counting. Then William Parry, the inspector, took the tickets out of the box and placed them in bunches on the table, so that the board, clerks, and other persons who assisted in assorting the tickets could have access to them. I think there were three persons other than the board and clerks who assisted in assorting and counting the votes. After the votes had thus been assorted and counted, each party or person who assisted in assorting and counting reported to William Parry, the inspector, the number of votes each candidate for governor and congressman had in the number of votes thus assorted and counted by them. I am not certain that William Parry made the whole summing up of the votes for governor and congressman or not; my impression is that some other person assisted in receiving the counts made by those who assisted in the assorting and counting.

Q. State now, if you remember, whether there was any other count made by the board than the one spoken of, in order to find the total result of the election; and if so, how this count was made, and by whom.—A. There was another count made. I counted the straight republican tickets first. I then handed them to Mr. Rosa in bunches of five. Mr. Rosa then counted them and passed them to William Parry, the inspector, in bunches of fifties and hundreds, and the inspector called them off to the clerks for tallying.

Q. State, if you remember, at what hour of the night or morning the final count was made by the clerks, and the announcement by the board of the result of the election.—A. I think about one o'clock in the morning.

2. I further object and dissent to so much of said report as charges fraud at the south poll of Richmond, founded on the parol testimony of persons pretending to be voters by their own oaths; and the evidence of many of the witnesses, who, by their own oaths, convict themselves of willful perjury in swearing to the giving of tickets to certain persons and seeing them vote them; as well as to others swearing, at one time, that



they had no knowledge of how any person, except themselves, voted, and afterward coming back and testifying, some months subsequently, by the wholesale, how many persons did vote, when these persons themselves did not know how they voted.

3. I further object and dissent to so much of said report as charges fraud at the south poll or precinct, founded on the assumption that the ballot-boxes were left unguarded, when the evidence shows that the inspector, at all times, had the key of the boxes, and that one of the judges had the key of the room, and that the whole board swear that no change was made, or attempted to be made, in the ballots, or number of ballots voted, so far as their knowledge extends; and their evidence is that, if such had been attempted, they could not but have known it; a majority of said board being republican, and all the judges men of this party.

4. I further object and dissent to so much of said report as rejects the evidence of the analyzation of the tickets voted at the south precinct, and charge that, under the laws of Indiana, and the decision of the supreme court of said State, the tickets voted are the highest and best evidence, and the parol testimony of the witnesses who pretended to swear for whom they voted, or intended to vote, is wholly unauthorized, and in violation of law, under the decision of said court:

One other question remains to be noticed. The contestor introduced on the trial one Charles H. Patterson as a witness, who testified that he was thirty-two years of age; that at the time of the October election in 1864, and for nine months or a year previous thereto, he had lived in Franklin Township, in said county of Johnson, and voted in said township. He was then asked to state for whom he voted for the office of treasurer of said county. The counsel of Wheat objected to the witness answering the questions for the reasons—

1. That the ballot of the witness was the best evidence.
  2. Because the ballot of the witness and others had been put in evidence by the contestor.
  3. Because oral evidence is not admissible when record evidence is to be had.
- The court below overruled the objections and permitted the witness to testify that he had voted for Ragsdale for treasurer; to which ruling of the court the defendant's counsel excepted.

Now what is the proper mode of examining a witness in such a case as this? The court says:

The record before us discloses the fact that the ballots counted out at the Franklin poll were before the court; and if they were not, if the witness could identify his ticket, and it had not been destroyed, it would have been the best evidence of the fact for whom he voted.

We think, therefore, that the witness should first have been asked if he could identify his ticket, and, if he answered in the affirmative, search should have been made for it.

We are aware that this course of examination would most probably be of but little practical importance, as but few voters would be able to identify their tickets; but when insisted on, it would be the proper course of examination, it being in conformity with the strict rules of evidence.

The judgment below is reversed.

5. I further object and dissent to the whole finding and report of the majority of said committee, because it is not sustained by the evidence, and is in violation of law in awarding the seat to Mr. Julian, who, by the official returns of the board of elections of that precinct, and the analyzation of the ballots voted, did *not* receive a majority of all the votes cast at said precinct, and consequently did not receive a majority of all the votes cast at said election for Representative from said district.

6. For these reasons and the causes which we have stated, founded on the evidence and the law governing the case, I believe that Mr. Reid, the contestant, is entitled to his seat as member elect from the fourth district of Indiana to the Forty-first Congress of these United States, and that Mr. Julian is not. I therefore submit my report to the House, with



my objections to the report of the majority of the committee, as here given.

#### RESOLUTIONS.

*Resolved*, That John S. Reid was duly elected a member of the Forty-first Congress from the fourth district of Indiana, and is entitled to the seat he claims in this House.

*Resolved*, That George W. Julian was not duly elected a member of the Forty-first Congress from the fourth district of Indiana, and is not entitled to a seat in this House.

### JOHN L. ZEIGLER vs. JOHN M. RICE.

The case turned on allegations of disloyalty against the sitting member.

The report was rejected *nem. con.*, July 11, 1870.

June 30, 1870.—Mr. R. R. Butler, from the Committee of Elections, made the following report:

*The Committee of Elections, to whom the case of contest from the ninth district of the State of Kentucky, John L. Zeigler vs. John M. Rice, was referred, beg leave to submit the following:*

This is a contest from the ninth district of Kentucky. At the election in said district John M. Rice received a majority of all the votes cast, and within the time prescribed by law John L. Zeigler, the opposing candidate, gave the sitting member notice that he would contest his seat in the said Forty-first Congress, as such Representative, in words and figures, to wit:

CATLETTSBURG, KENTUCKY, December 21, 1868.

SIR: You are notified that I will contest your right to a seat in the Forty-first Congress of the United States as a Representative for the ninth district of Kentucky on the following grounds:

First. That under Article XIV, amendment to the Constitution of the United States, section 3, you are, and were at the time you were voted for at the election held on the 3d day of November, 1868, ineligible to the place of Representative in the Congress of the United States, or to any other office of trust or profit under the United States, or under any State thereof, and for the reason—

1. That, as a member of the legislature of the State of Kentucky, prior to or about the beginning of the late rebellion against the Government of the United States, you took an oath to support the Constitution of the United States, and thereafter gave aid and comfort to the enemies thereof.

2. That, as a member of the legislature of the State of Kentucky in the year 1861, you voted for a resolution, which passed the house of said State by a large majority, pledging the State of Kentucky to resist by force, and with all her powers, and to the last extremity, any attempt to coerce by arms the people of the Southern States into submission to the laws of the United States, the people of the Southern States being at that time in open rebellion.

3. That you engaged in rebellion yourself, being present with and aiding the enemies of the United States in their rebellion and insurrection against the Government of the United States.

Second. That notice of this disqualification on your part was given publicly to the voters of the district prior to the said election held on the 3d day of November, 1868, and during the time you stood as a candidate before the people; that this disqualification existed at that time; and that by reason thereof all votes cast for you were and are illegal and void; wherefore I was duly elected by the legal vote of said district on said 3d day of November last, and am lawfully entitled to and claim the seat in the Forty-first Congress of the United States as Representative for said ninth district of Kentucky.

Respectfully,

JOHN L. ZEIGLER.

Hon. JOHN M. RICE,  
Louisia, Kentucky.



And within the time prescribed by law the contestee served his answer upon contestant in words and figures following, to wit:

FRANKFORT, January 14, 1869.

SIR: I acknowledge the receipt of your notice of intention to contest my right to a seat in the Forty-first Congress of the United States for the ninth district of Kentucky.

For answer to ground first: It is untrue that under article 14, amendment to the Constitution of the United States, section 3, I am, or was at the time I was voted for at the election holden on the 3d day of November, 1868, ineligible to the place of Representative in the Congress of the United States, or to any other office of profit or trust under the United States, or under any State thereof.

To reason first: It is true that, as a member of the legislature of the State of Kentucky, prior to the late rebellion, I took an oath to support the Constitution of the United States; but it is untrue that I thereafter gave aid and comfort to the enemies thereof.

For answer to reason second: It is true that, as a member of the legislature of Kentucky, I voted on the 21st day of January, 1861, in favor of what was known as the Ewing resolution, the import of which is not such as indicated by section 2d, ground 1st, of your notice, but is in words as follows:

*"Resolved by the general assembly of the Commonwealth of Kentucky, That this general assembly has heard with profound regret of the resolutions recently adopted by the States of New York, Ohio, Maine, and Massachusetts, tendering men and money to the President of the United States, to be used in coercing certain sovereign States of the South into obedience to the Federal Government.*

*"Resolved, That this general assembly receives the action of the legislatures of New York, Ohio, Maine, and Massachusetts as the indication of a purpose upon the part of the people of these States to further complicate existing difficulties by forcing the people of the South to the extremity of submission or resistance; and so regarding it, the governor of the State of Kentucky is hereby requested to inform the executives of each of said States that it is the opinion of this general assembly, that whenever the authorities of these States shall send armed forces to the South, for the purposes indicated in said resolutions, the people of Kentucky, uniting with their brethren of the South, will, as one man, resist such invasion of the soil of the South at all hazards, and to the last extremity."* (See House journal, called session, 1861, pages 68-9.)

Said resolution was adopted nearly three months before the war was inaugurated, and at a time when no one in Kentucky believed in the doctrine of coercion; in fact, it was repudiated by many of the most distinguished leaders of the republican party. The resolution was adopted by a vote of yeas 87, nays 6; among the former of whom were Burnaur, Buckner, Burbridge, Burdett, Jacobs, Goodloe, Neale, Wolfe, and many others, distinguished then as since for their unwavering devotion to the Federal Government. The doctrines of the Ewing resolution were maintained and adhered to by the Union party of Kentucky, after the firing upon Fort Sumter, as evidenced by the address of the executive committee of the Union party of Kentucky, dated the — day of April, 1861. My action, therefore, in that regard was in keeping with the position of the Union party of Kentucky.

It is untrue that at the time I voted for the resolution referred to in your second specification, and numbered as "2d reason," that the people of the Southern States were in open rebellion against the Government of the United States.

Your third ground or reason is false.

I did not engage in rebellion, nor was I present with and aiding the enemies of the United States in their rebellion and insurrection against the Government of the United States.

I deny that any legal notice of disqualification on my part, such as indicated in your notice of contest, was given publicly to the voters of the district prior to the said election holden on the 3d day of November, 1868, for the reason that no such disqualification existed in fact, and for the additional reason that neither yourself nor any one else in said ninth district had any competent authority to serve such notice of disqualification upon the voters of said district. I deny that all or any of the votes cast for me at said election, on the 3d day of November, 1868, were illegal and void.

I shall, therefore, resist your claim to have and to hold the position of Representative in the Congress of the United States for the ninth district of Kentucky, to which the qualified voters of the district refused to elect you.

I claim that I have been legally and fairly elected a member of the Forty-first Congress of the United States for the ninth district of Kentucky, by a large majority of the legally qualified voters of said district, at the election holden on the 3d day of November, 1868; that I possess all the qualifications required by the Constitution of the United States, and the laws of Congress passed in pursuance thereto; and that I am not, nor was I, at the time I was voted for at said election, on the 3d day of November, 1868, disqualified from holding the position of member of Congress, by reason of



any provision of the Constitution of the United States or amendments thereto; or by reason of any act or law of Congress passed in pursuance thereto.

JOHN M. RICE.

Col. JOHN L. ZEIGLER.

Thus it will be seen that the contestant charges that the contestee is ineligible under the fourteenth article of the Constitution, section three, by reason of having, as a member of the legislature of the State of Kentucky, taken an oath to support the Constitution of the United States, and afterwards gave aid and comfort to the enemies thereof, by voting in said legislature in the year 1861 for the following resolutions:

*Resolved by the general assembly of the Commonwealth of Kentucky, That this general assembly has heard with profound regret of the resolutions recently adopted by the States of New York, Ohio, Maine and Massachusetts, tendering men and money to the President of the United States, to be used in coercing certain sovereign States of the South into obedience to the Federal Government.*

*Resolved, That this general assembly receives the action of the legislatures of New York, Ohio, Maine and Massachusetts as the indication of a purpose on the part of the people of these States to further complicate existing difficulties by forcing the people of the South to the extremity of submission or resistance; and, so regarding it, the governor of the State of Kentucky is hereby requested to inform the executives of each of said States that it is the opinion of this general assembly that whenever the authorities of those States shall send armed forces to the South for the purposes indicated in said resolutions, the people of Kentucky, uniting with their brethren of the South, will, as one man, resist such invasion of the soil of the South at all hazards, and to the last extremity.*

The contestee admits that he did vote for the foregoing resolutions, and offers as an excuse the following:

The committee cannot fail to remember that at the time this resolution was adopted extraordinary and startling events in the history of this country were transpiring on every hand, and the public mind was everywhere agitated by questions so new, and at the same time so grave and perplexing in their character, that the most gigantic minds both North and South were at a loss to determine how they should be solved. Several of the Southern States had passed ordinances of secession. The President in his preceding message had left the decided impression upon the popular mind that, in his opinion, the General Government had no constitutional power to coerce them into submission, and everything seemed to indicate that his settled policy was in accord with that opinion. On the other hand, the legislatures of several of the Northern States were urging the administration to resort at once to forcible coercion, and tendering men and money for that purpose.

If voting that if the States of New York, Ohio, Maine, and Massachusetts should, through the President of the United States, use men and money to coerce the Southern States into obedience to the Federal Government, that Kentucky, uniting with their brethren of the South, would resist such invasion of the soil of the South at all hazards and to the last extremity, was giving aid and comfort to the enemies of the United States, then the contestee was, and is, ineligible under the article and section aforesaid. The committee, looking to the state of the country, and the status of the Chief Executive, declaring that the Federal Government had no right to coerce a sovereign State, and no war existing at the time, only save two or three States having, as they declared, separated from the Union of States, have come to the conclusion that the voting for said resolutions was not giving aid and comfort to the enemies of the United States in the sense contemplated by the fundamental law. But the committee are well satisfied that if the vote on said resolutions had been given after the policy of the Government had been announced, that it was not only the right, but the duty, of the Federal Government to coerce a sovereign State into obedience to the Federal Government, it would have been giving aid and comfort to the enemies of the United States. The contestee alleges that his action on these resolutions was in keeping with the position of the Union party of the State of Ken-



tucky. If that had been the position of the Union party north of Mason and Dixon's line, the Confederate States would have achieved their independence without much sacrifice of blood or treasure. If resistance to the loyal men was the Union platform in Kentucky, it was not so understood outside of the State, as Kentucky furnished many regiments of troops for the Federal Army, who did not resist the loyal men of New York, Ohio, Maine, and Massachusetts, but resisted the rebel troops under Breckinridge and Buckner, whose commands in part were composed of Kentuckians. While the committee believe that the voting for said resolutions was not giving aid and comfort as contemplated by the law, they believe his subsequent acts, after a state of war existed, and the policy of the Federal Government was announced and well understood by all, did give aid and comfort to the enemies of the United States. The testimony all goes to show that he was a secessionist. His influence, from the time he gave the vote on said resolutions up to his capture, was on the side of the rebellion. When the rebel army was driven from Kentucky to Virginia, he came out before it, and returned when it returned, and was captured near the rebel army, and stated when he was captured that he had authority to recruit for the rebel service. See the following testimony:

The deposition of JOHN DILS, jr., taken on the 15th of March, 1869, at the storehouse of Dils & Thornbury, in Piketon, Pike County, Kentucky, to be read as evidence on the trial of the contest of John L. Zeigler against John M. Rice for a seat as Representative from the ninth congressional district of Kentucky in the Forty-first Congress of the United States.

The deposition of Colonel John Dils, jr., a witness of lawful age, and first duly sworn and examined by John L. Zeigler by counsel.

Question. State your age, place of residence, and occupation; are you acquainted with the Hon. John M. Rice, Representative elect from the ninth congressional district of Kentucky to the Forty-first Congress of the United States; if yea, how long have you known him?—Answer. My age is about forty-eight years; my residence, Pikeville, Pike County, Kentucky—has been the most of the time for about thirty years. My occupation, merchandising, &c. I have been acquainted with Mr. J. M. Rice for fifteen years or more.

By same:

Q. State if you saw John M. Rice, member elect to the forty-first Congress of the United States, in the town of Piketon, Pike County, Kentucky, in the months of October or November, 1861. Was the town then occupied by the rebel forces; and if so, who was their commander?—A. I saw Mr. J. M. Rice, the members elect alluded to, in the town of Pikeville, Kentucky, in the month of October, 1861, and Colonel John S. Williams, of the confederate forces, was then in command and possession of the said place with his command.

By same:

Q. State as near as you can how long he remained in the town of Piketon in October, 1861, while the confederate forces occupied the town.—A. About one week that I know of. I was taken a prisoner and taken to Richmond, Virginia, and left the forces in Pikeville.

By same:

Q. Was the Hon. John M. Rice, Representative elect from the ninth congressional district of Kentucky to the Forty-first Congress of the United States, armed when in Piketon, Pike County, Kentucky, in October, 1861, and while the town was occupied by the rebel forces? Did he, in the month of October, 1861, buy a gun? If so, for what purpose did he say he bought the gun? Did he name the gun? If so, what did he call it?—A. I saw John M. Rice with a side-arm, I think a pistol, at that time. I do not recollect distinctly seeing him with a gun at that time. I sold Mr. Rice a rifle gun in the month of May, I think, 1861. Mr. Rice spoke of it to me afterward of being well pleased with the gun, and called his "Yankee-killer."

By same:

Q. State if you have any knowledge that the Hon. John M. Rice was in any way connected with the rebel army, either in the years 1861 or 1862; if so, state all you know



about his connection with the army, and how you derived your information. Did he have any office in the army?—A. All I know of Mr. Rice holding any position, or acting with the confederate army, is from what he told me himself. Mr. Rice told me, in the year 1862, after I had went his bail in a bond at Louisville, Kentucky, for his appearance before United States court, that he was very lucky when he was captured by the Union forces near Hatches, Floyd County, Kentucky; for if the boys had searched him they would have found his commission and recruiting papers; but they did not do so, and he destroyed them the first opportunity he got. He also said, if General Garfield had got those papers he was satisfied he would have been sent off to some prison.

By same :

Q. How many different conversations did you have with him in reference to his having recruiting papers for the confederate army, and how long after he had been released from arrest by General Garfield?—A. We had several; they were at different times and places; could not state accurately the number; the first was in August, 1862, or September.

By same :

Q. Is it or not a fact that the Hon. John M. Rice, Representative elect from the ninth congressional district of Kentucky to the Forty-first Congress of the United States, in the year 1861 was a man of influence, and at that time was an open advocate to the southern confederacy and the then existing rebellion against the United States?—A. Mr. John M. Rice was a man of prominence then and now, and a warm advocate of the southern cause in the years 1861 and 1862.

By same :

Q. State if you know that the Hon. John M. Rice had any correspondence with the rebel authorities at Richmond, Virginia, in the year 1861.—A. There was a letter read in my behalf, by Judge Braxton, I think, written by Mr. Rice, which I knew nothing of until I was brought before the judge out of Libby Prison, in Richmond, Va., for trial or examination.

Cross-examination by John M. Rice's counsel :

Q. What was the purport of the letter, and the object spoken of?—A. The purport of the letter was stating the facts about my arrest that caused me to be sent to prison by Colonel Williams, and the object was to have justice done me in the matter, so that I might be released.

By same :

Q. Was it not a warm advocacy for your release from the terrible prison Libby; and was not the same carried there by your wife, and had it not the desired object?—A. I do not know how the letter came to Richmond—whether my wife brought it or whom; my wife was there, and Judge Braxton seemed to pay a great deal to the purport of Mr. Rice's letter; the letter advocated warmly in favor of my release.

By same :

Q. What was you arrested for and imprisoned in Libby; was it not for your known opposition to the confederacy and a Union man; and had you not taken warm part in the Union cause at the time of arrest, and your position well known?—A. I do not know for what particular cause of my arrest; I know that I was at that time and now a warm friend and advocate of the Union. Colonel Williams wrote to Judge Braxton that I was a dangerous Union man, the most dangerous and influential he found in the mountains of Kentucky.

By same :

Q. You will state if you have knowledge yourself of John M. Rice doing an act that gave aid and comfort to the rebellion; if so, state what it was.—A. I know of no particular act of John M. Rice in giving aid or comfort to the confederate forces only as to what I have stated before.

By same :

Q. Do you know of his recruiting for the confederate service, or attempting to do; and did he say, in the conversation alluded to, that he ever had recruited? State what grade of commission did he say he had.—A. I do not know of Mr. Rice recruiting any man at all. My recollection in the conversation with Mr. Rice about his recruiting papers is, that he was then on his way for recruiting a company of men, which, I presume, was a captaincy.

By same :

Q. Is it not a fact that John M. Rice had resided in this town, Pikeville, and the place you have spoken of that Colonel Williams and command was at the time you was



arrested; from about the years 1853 or 1854 to the spring of 1861 was a practicing lawyer in Pike County, and had been during his residence there; his business was in this county, (Pike;) had he not come to Pikeville some time before Williams and his command came there? You will state if you saw any act of John M. Rice assisting the rebels while they were in Pikeville; if so, state what you saw him do.—A. Mr. Rice resided in Pikeville, Kentucky, some years before 1861; was, at all the time of his residence in said town, a practicing lawyer. Mr. Rice has had, ever since, more or less business in said town. I think Mr. Rice came to Pikeville once or twice before the command of Colonel Williams came from Prestonburg, Kentucky, to Pikeville. I do not recollect of seeing any act of Mr. Rice with the army of Colonel Williams's command at any time, or any other forces that I recollect of.

By same:

Q. Is it not a fact that you and John M. Rice was on the best of terms, and jocularly talked over your troubles of the war and adventures in a free, jocular way, and laughed over them freely?—A. Mr. Rice and myself have always been on the best of terms, and especially at the time alluded to. We were very friendly and jocular. We both talked freely over our troubles in the war.

By same:

Q. You have spoken of John M. Rice buying a rifle gun of you in the spring of 1861, in Pikeville; did he not trade you some notes in a settlement in buying the gun, and did not the conversation occur in the presence of several that it was his Yankee killer, in a jocular way, and at a time before any war or hostilities in this country; and did you ever see him with the gun afterward; if so, was it in any kind of array of hostility or practicing with same?—A. At the time Mr. Rice bought the rifle gun of me he traded me some notes and papers on other parties, at the time spoken of, calling the gun a Yankee killer some time after he bought of me; but he might have spoken the same way at the time he bought the gun. I think, when he spoke of the gun being a good Yankee, he laughed at me at the time, but still I thought he was in earnest when he spoke against the Yankees. I would not be positive as to ever seeing Mr. Rice with the gun spoken of. At the time Mr. Rice bought the gun of me there was no hostile forces in this section of Kentucky, nor not expected at the time.

By same:

Q. Is it not a fact that, in the fall of 1861, there was a great deal of excitement, and the people was in great commotion, the Union men running north to the Ohio River, and southern men making their way toward Virginia, not knowing what they were doing, and men that had really done nothing; and was not the most outrageous tales in circulation in this country as to the acts of parties to each other?—A. At the time alluded to there was a great excitement in this section of Kentucky, and men were continually passing each way, some to Ohio and others to Virginia. Men were passing each way that had no connection with any army whatever, that were old and harmless; and there were a great many exciting stories afloat.

By same:

Q. At the time John M. Rice came to Pikeville, in fall of 1861, had Humphrey Marshall come into Kentucky, the Sandy Valley, with a command, recruiting, or any other way, or at Prestonburg; and did he go to Prestonburg until several months after Rice came to Pikeville?—A. Humphrey Marshall came into Kentucky in the month, I think, of December, 1861. Mr. John M. Rice came to Pikeville at and before Colonel Williams's command was routed by General Nelson's forces, in October, 1861.

By same:

Q. You have stated that John M. Rice was, in 1861, a man of influence, and still is. Is it not a fact, if he had added his aid and influence to the confederacy, that it would have been known and easily proven in this country?—A. If Mr. Rice had taken any decided hostile position, such as to get men to go into the army and fight, &c., it would have been known, for he could have commanded an influence at any time.

By same:

Q. Was you not colonel of the Thirty-ninth Kentucky volunteer regiment of infantry, Federal, and recruited said regiment.—A. I recruited and commanded the Thirty-ninth regiment.

By same:

Q. Is it not a known fact among the Federal soldiers that John M. Rice was in the Federal service; that he was quartermaster of the Sixty-eighth regiment of enrolled militia of Lawrence County, which was called into the service of the Federal Government in the Sandy Valley in the aid of the said forces; and that that regiment did effective service?—A. I heard it frequently said that Mr. Rice acted as quartermaster



of the Sixty-eighth regiment enrolled militia, (I refer to the Adjutant General's report;) I saw some of said regiment engaged in Government service, such as assisting transporting provisions, &c., up Sandy.

By same :

Q. You have said that John M. Rice was a warm advocate of the southern cause; did you mean by that he was opposed to the war? And in his conversation, did you ever hear him publicly advocate the cause, and advise men to join the service of the confederacy at any time? If so, state when and where, and what he said, and who was present, after the war was declared.—A. I do not recollect of ever hearing Mr. Rice trying to influence any one to join the confederate forces, but Mr. Rice was a warm advocate of their cause; when talking on the subject of the war, he always spoke in their favor, except as to the guerillas; he was down on them. I do not recollect of any particular person or persons being present at any time of our frequent conversations. I do not recollect of any public speeches of his or arguments about the war.

Re-examined by counsel of John L. Zeigler:

Q. Is it or not a fact the Sixty-eighth regiment of Kentucky enrolled militia was called into service by compulsory military orders; and is it or not a fact that John M. Rice, when acting in the quartermaster's department, was at his home; how long was the regiment in service; is it or not a fact Hon. John M. Rice was arrested before he would agree to do duty in the Sixty-eighth regiment Kentucky militia?—A. I recollect there was considerable trouble in getting the men together that composed said regiment; it was called out, I think, as a reserved force, the regular forces being sent to the front. I do not know of Mr. Rice refusing to act, nor do I know that he did act as quartermaster of said regiment.

By same :

Q. How long was the Sixty-eighth regiment in service; where was it stationed; where did John M. Rice then live; what kind of duty did it do?—A. I do not know how long it was in service; the regiment was only together as the exigency seemed to be demanded by those in command at Louisa. Some of the men would go and stay a week or so and return home, stating they were dismissed for a certain time. The rendezvous was at Louisa, Kentucky; Mr. Rice lived there. I saw some of the men boating or transporting provisions up Sandy.

By same :

Q. In the letter you saw in Judge Baxter's possession when you was examined in Richmond, Virginia, in 1861, and written by John M. Rice, did he or not in that letter express his devotion to the confederate cause?—A. I do not recollect of anything said in said letter about his position in the war, but Judge Braxton said he had a letter from Mr. Rice, a friend of their cause, that spoke highly of me. I did not hear all the letter read, but I saw it was in his handwriting, and Mr. Rice told me afterward he wrote a letter for my benefit to Richmond, Virginia.

By same :

Q. Was the conversation with John M. Rice, in August, 1862, when John M. Rice told you he had destroyed his recruiting papers, a jocular one?—A. I did not so consider it; for he was speaking of how narrowly he escaped imprisonment, if the papers should have fallen into General Garfield's hands.

By same :

Q. You say John M. Rice could at any time have easily raised a company; is it or not a fact that he told you he had just come into Kentucky for the purpose of commencing the recruiting for the confederate cause, at the time of his capture?—A. Mr. Rice told me he was then on his way to General Marshall's forces for the purpose of recruiting for the confederate cause, when captured by the Union forces.

Re-cross-examined by Rice's counsel:

Q. Do you intend to be understood that Rice told you, at the time of his arrest, that he was then on his way to commence his recruiting, and that he was arrested before he began?—A. I understood Mr. Rice just in this language—that he was just from Virginia; had come through the Pound Gap, and had got as far as Hatcher's, Floyd County, Kentucky, and on his way to General Marshall's forces to recruit men. I did not hear him say that he had recruited any men at all.

By same :

Q. Was Colonel John L. Zeigler in this county (Pike) during his canvass, or did you even ever hear of his being in the county; was any notice published in this county that John M. Rice was disqualified to hold office of congressman?—A. I am satisfied the colonel was not in this county, as he told me he was not, and I never saw him at the



time alluded to; I never saw, to my recollection, any notice of the kind in this county alluded to.

And further this deponent saith not.

JOHN DILS, JR.

Adjourned until the 16th of March, 1869, this 15th of March, 1869.

WM. WEDDINGTON, P. J. P. C. C.

The deposition of Major MARTIN THORNBERRY, a witness of lawful age, and examined by JOHN L. ZEIGLER:

Major Thornberry, state your age, place of residence, and occupation. Are you acquainted with the Hon. John M. Rice, Representative elect to the Forty-first Congress of the United States from the ninth congressional district of Kentucky? If you are acquainted with him, how long have you known him?—Answer. My age is forty-one years; a resident of Pike County, Kentucky; occupation a farmer. I am acquainted with the Hon. John M. Rice; I have known him for about twenty-five years.

By same:

Q. Did you assist in arresting him during the war? If so, when and where was it? Did you have any conversation with him, while he was in arrest, in reference to his connection with the so-called confederate army? and, if so, state as near as you can what he said.—A. I assisted in arresting him during the late war; I assisted in arresting him the day after the battle of Middle Creek. I do not recollect the day of the month of January, 1862. It was at Anthony Hatcher's, opposite the mouth of Mud Creek, or nearly opposite the mouth of Mud, in Floyd County, Kentucky. I had a conversation with him during the time he was in arrest and at the time he was arrested. In regard to his connection with the so-called confederate army, he said if I would not let the Sowards hurt him, he would get his pistol and give it to me; he got the pistol and gave it to me. He said he had a good horse, and asked me if I would let them take it away from him? I told him no; that he might ride it himself. As we went on toward Paintsville, he asked me if they would put a rebel or a confederate officer in jail or prison, or would they let him have the bounds of the camp or town. I said, "No, John, they will not put you in jail; they will let you have the bounds of the camp." Then he told me that he either had a confederate commission of captain, or would have in a few days. He told me that he would have taken command of a company in a few days if you had not have caught him.

By same:

Q. Did the Hon. John M. Rice claim, while in arrest, to be an officer of the so-called confederate army?—A. He said just what I told you before.

Q. Who was encamped at Paintsville at the time the Hon. John M. Rice was arrested? What was done with him after he was arrested?—A. Colonel Garfield was with his forces, then in camp at Paintsville. He was taken and delivered up to Colonel Garfield.

By same:

Q. Where was the place of residence of the Hon. John M. Rice at the time of his arrest, and how far from the mouth of Mud Creek, in Floyd County?—A. The residence of the Hon. John M. Rice, at the time of his arrest, was in the town of Louisa, Kentucky, about between fifty-five and seven miles from the mouth of Mud Creek.

Question by same:

Q. Were there any rebel or confederate troops about the mouth of the Mud at the time of the capture of the Hon. John M. Rice; and if so, how many and how far off were they from where you captured Mr. Rice?—A. There was some men there they said was rebels; I saw men there; I did not know whether they were rebels or not; they were just across the river from where I was, about three hundred yards.

Question by same:

Q. Who did Mr. Rice tell you the persons were on the other side of the river from the place of his capture; were they rebels or Federals?—A. John M. Rice told me they were rebels; he told me who two of them were—Luke B. Sword and Harrison Ratcliff.

Question by same:

Q. The day you captured Mr. Rice did you see Platt Moore; was he under arms; had he and Mr. Rice been together before you saw him or Mr. Rice on that day? Tell all you know about this, and what Rice said.—A. I saw Platt Moore the day we arrested John M. Rice; Platt Moore had a gun, I think; we were in a run after him; we was about to catch him, and he dismounted and took to the hills, and we shot at him; this was just below the Stratton farm; this farm is just about five miles from Hatcher's



where John M. Rice was captured. When we captured John M. Rice he asked me where Platt Moore was; I told him we met him at the lower end of the Stratton farm, and we were about to catch him, and he dismounted and took to the hills. "Yes," says Rice, "there is his mare you have got." Rice said, he, Platt Moore, was our picket, that we sent here from the Middle Creek fight, to know if we should get out or not.

Question by same:

Q. Was Platt Moore a rebel soldier or was he a Federal?—A. He was not a Federal soldier; they said he was a rebel soldier; I do not know whether he was or not.

Question by same:

Q. Did Mr. Rice ever tell you, at any time, that he had made money by his capture, and how much? Tell all he said about it.—A. About the close of the war, or about 1864 or 1865, I had a conversation with John M. Rice; in that conversation I told him in a joke that he ought to divide money with me that he made since I had captured him. Yes, says he, you caused me to make from five to ten thousand dollars; he said he had no idea but that he would have been with the rebels yet if I had not captured him.

Cross-examined by contestee's counsel:

Q. Mr. Thornberry, how far do you reside from this place; and was you summoned to appear here and give your testimony?—A. I reckon it is about sixty-five or seventy miles from this place; I accepted a subpoena to appear at this place as a witness; I have the subpoena in my pocket.

By same:

Q. You have given the various conversations with John M. Rice; you will now state if you have knowledge of your own that John M. Rice ever engaged in insurrection or rebellion against the United States, or gave aid or comfort to the enemies thereof; if so, give the particular acts.—A. Of my own knowledge I never saw him at it.

Question by same:

Q. Do I understand you to say you have no knowledge of yours that he done a single act in contravention to the fourteenth article of the Constitution or not?—A. That is a question that I cannot answer. I caught him at the time above spoken of inside of the rebel lines; and I don't know whether this was in contravention of the fourteenth article or not; that is all that I know of my own knowledge.

By same:

Q. You will now state who was present at each of the conversations you have detailed in examination-in-chief?—A. Well, at the most of the times the conversation took place with Mr. Rice and myself while riding along the road from the place where I caught him to Paintsville. There were several others along at the time, either behind or before us, but I don't know and don't think that anybody heard the conversations except myself and Mr. Rice—we were riding side and side.

By same:

Q. Were you a soldier at the time of Rice's arrest, or any of the persons present with you; and was any soldiers with him at Hatcher's at the time of the arrest; was the Sowards along at the time; if so, give their names?—A. I was a soldier at the time, but not mustered into the United States service; most all those that were with me were soldiers, some were not. There were two rebel soldiers, viz, David A. Powell and Stephen Low, with John M. Rice at Hatcher's at the time of his arrest. I don't know of my own knowledge that Powell and Low were rebel soldiers, but they claimed to be. I think Lewis Sowards, M. C. W. Sowards, Thomas J. Sowards, and Henry C. Sowards were along with me when the arrest was made.

By same:

Q. You will tell the state of feelings and threats of the Sowards toward John M. Rice; and you will also state John M. Rice's appearance and acts when arrested; if he regarded his life endangered; if Sowards and those with you; was not the Sowards with you to Paintsville; and you will also state what Rice said in the conversations you have detailed about his dread of them; and did he not call upon you to protect him from them?

(Objected to by Zeigler's counse'.)

A. I don't know of any threats before his arrest; but I heard the Sowards say afterward that if it had not been for me they would have killed him. I know that the Sowards were very malicious toward Mr. Rice. Mr. Rice was very badly scared at the time of his arrest. I think he regarded his life in danger. He asked me to keep them (the Sowards) from killing him. The Sowards and those that were with me were



guards to Paintsville; Rice asked me to keep them (the Sowards) from killing him, and asked me if I would let them kill him, and I told him I would not.

By same:

Q. Did you ever see a worse scared man than Rice; and had he not good grounds to apprehend the Sowards would kill him; were they not very dangerous men? And you will also state if they were soldiers of the United States at that time, regularly sworn in or any of the company with you; if any regularly sworn in, give their names.

(Objected to by Mr. Zeigler's counsel.)

A. I can say that Rice was very badly scared; but can't say whether he was the worst scared man I ever saw or not. He, Mr. Rice, was in danger; but I don't regard that he was really in danger from any of the Sowards, except Thomas J. Sowards. But I think he was in danger from T. J. Sowards. He might have been in danger from Lewis Sowards, but I don't know. I did not regard any of the Sowards as very dangerous, except Thomas J. Sowards, and I did not regard him as a very dangerous man. I think that T. J. Sowards and Lewis Sowards were mustered into the United States service; all the balance, I think, had been sworn, but not mustered into the service.

By same:

Q. What became of Sawyer and David Powell, spoken of by you at Hatcher; did Rice make any effort to get away or not?—A. David Powell jumped off his horse and ran away that night; Low was, as I was informed, released on bail; Mr. Rice made no attempt to get away that I saw.

Question by same:

Q. You have spoken of a conversation with Rice in 1864 or 1865, in Louisa, about his dividing his money with you; now was not that during what is known as the oil excitement, and Rice had made some sales of land. You have said you were joking; did you not receive his words in the same way you gave yours?

(Objected by Mr. Zeigler's counsel.)

A. What I said I said in a joke; whether he was joking or not I don't know; this was during the excitement about oil lands in this county; Mr. Rice was engaged in the oil lease business.

Question by same:

Q. Do you know what time Humphrey Marshall was recruiting on the Sandy?—A. Humphrey Marshall was on the Sandy in the latter part of 1861 or first of 1862; I know nothing about his recruiting only from hearsay.

By same:

Q. Did you ever see a rebel commission for captain?—A. I never did.

By same:

Q. Where was John M. Rice's residence and business for several years prior to 1861?—A. Before the spring of 1861, Mr. Rice lived in Pikeville, Pike County, Kentucky, and did business there as an attorney.

And further this deponent saith not.

MARTIN THORNBERRY.

Also the deposition of JOHN PIGG, taken at the same time and place, and for the same purpose that is mentioned in the caption. He being of lawful age and first duly sworn, deposeth and saith:

Question by attorney for Zeigler: Where do you reside and what is your occupation?—Answer. I reside at Louisa, Kentucky; my occupation is that of blacksmith.

By same:

Q. Are you acquainted with John M. Rice, esq., and how long have you known him?—A. I am acquainted with John M. Rice, and have known him about twenty years.

By same:

Q. Where was he in the year 1861?—A. A portion of that year he was about Louisa, Kentucky. He moved to Louisa, Kentucky, in the spring of 1861, and the greater portion of the time he was there.

By same:

Q. Was Mr. Rice in Virginia in the year 1861; and, if so, what time in that year was it that he was there?—A. I do not recollect.

By same:

Q. Was Mr. Rice ever at Prestonburg, Kentucky, when General Humphrey Marshall



was there in command of rebel troops?—A. He started from Louisa, Kentucky, and said he was going there.

By same:

Q. What did he say he was going there for?—A. He said that he was going there with the expectation of getting the place of captain or lieutenant.

By same:

Q. Was the command of captain or lieutenant, which Mr. Rice then wanted, to be of rebel or Federal troops?—A. I think it was rebel.

By same:

Q. Did Mr. Rice ever speak to you about weapons of warfare in the year 1861-'62; and if so, in what service were they to be used?—A. He spoke to me to make him a saber; that he was going to Prestonburg, Kentucky.

By same:

Q. Did Mr. Rice have a cartouch-box and pistol-case made before he left Louisa for Prestonburg, Kentucky, and by whom were they made, and for what purpose? Tell all you know about this.—A. He had a cartouch-box and pistol-case made before he left Louisa, Kentucky. They were made by John Keller. This was before he left for Prestonburg. I suppose they were made for war purposes, but I did not hear Mr. Rice say that he was going to use them for that purpose.

By same:

Q. What did Mr. Rice want the saber for which he applied to you to make for him, and why did you decline to make it?—A. He applied to me to make him a saber, but he did not tell me what he was going to use it for. I declined to make it, because it did not suit my principles.

By same:

Q. What were your principles that forbade you making the saber?—A. I was for the Union.

By same:

Q. You will please state anything you heard Mr. Rice say during the late rebellion of a disloyal character.—A. When Mr. Rice was on his way to Frankfort, in the presence of Judge Short and wife, and myself, at Louisa, Kentucky, when he (Rice) was waiting for a boat, he said that he was going to Frankfort to divide this Union. That he intended to split her wide open in the middle. That was his vote every time.

By same:

Q. Were you at Louisa before the late congressional election in this (ninth) district, when the contestant (Zeigler) made a speech; and if so, did he publish to the voters that John M. Rice was disfranchised by reason of the fourteenth constitutional amendment?—A. I was present at Louisa, Kentucky, when Zeigler made a speech, before the congressional election; in which speech Zeigler said that if Rice was elected he (Rice) could not take his seat, and reason he could not take his seat; that he (Zeigler) knew it.

By same:

Q. Did the contestant (Zeigler) tell the voters of Lawrence, at Louisa, that Mr. Rice could not take his seat because of his disloyal acts?—A. Zeigler did not say anything about Rice's disloyal acts, but said that Rice could not take his seat, and he (Zeigler) knew it.

Cross-examined by contestee's counsel:

Q. You will state, if you know, what was Mr. John M. Rice's business to Frankfort; or if stated by him in the conversation you have referred to in the presence of Judge Short and wife, and in which he said he was going for splitting the Union in the middle.—A. He (Rice) said that he was on his way to the legislature.

By same:

Q. Was he a member, or elected to the legislature that was then about to assemble; if so, what district was he the representative of?—A. It was my understanding that he (Rice) was a member from Pike County.

By same:

Q. Did you get your knowledge of his being a member of the legislature from the conversation alluded to with him?—A. From that, and from what I understood from others.



By same:

Q. Now you will please state the month and year this conversation took place?—A. I think it was in the fall of 1860.

By same:

Q. In the conversation alluded to by you about Rice's going in for the splitting of the Union in the middle, did not Rice jocularly speak also about the effort of Tennessee, Indiana, Ohio, and Kentucky undertaking to save the Union, and got on a big drunk, and he was now going in for splitting the Union in the middle?—A. Not as I heard.

By same:

Q. Was not this a jocular conversation, and before the secession of any of the States?—A. I do not know that it was. I thought he was positive about it. I do not recollect whether any of the States had seceded or not.

By same:

Q. Do you know when the first State did secede?—A. I do not.

By same:

Q. Did this conversation occur before John M. Rice moved to Louisa?—A. It did.

By same:

Q. You have stated a conversation you had about Rice's wanting you to make a saber and Keller a cartridge-box; was not this about the time the State guards was forming in Louisa, and they were uniforming themselves?—A. I do not think it was.

By same:

Q. What time did that conversation occur? Give the month, place, and year as near as you can.—A. It took place in Louisa, Kentucky, in the last of 1861, or the summer of 1862, which time I am not positive. It was the time Marshall was recruiting at Prestonburg.

By same:

Q. Do you know, of your own knowledge, that Marshall did recruit at Prestonburg?—A. I do not know that Marshall was recruiting of my own knowledge, but I only knew Marshall was recruiting from the rumor of the country.

By same:

Q. Have you any feeling or particular interest in this case further than to answer such questions as are legally asked you? If so, state what it is.—A. I have none.

By same:

Q. Was this conversation you had with Rice about the saber before the organization of the Fourteenth Kentucky Federal Infantry or after?—A. I think it was before.

By same:

Q. You have said the conversation occurred in the last of the year 1861, or summer of 1862. If you recollect as to the season of the year more certain than the year, you will give the season; and also state how long this conversation was before Rice started in the direction of Prestonburg, and you will also state if Rice ever took more than one trip toward Prestonburg, after the said time, during the war?—A. It was in warm weather, either in the latter part of the summer, or fore part of the fall. The conversation took place a short time before Rice started in the direction of Prestonburg. He only took one trip toward Prestonburg to my knowledge.

By same:

Q. Did not Rice leave Louisa and go in the direction of Prestonburg after a part of the Fifth Virginia Federal forces had been stationed at Cassville, Virginia, opposite Louisa?—A. I do not know.

By same:

Q. Was it before or after the Fifth Virginia was stationed at Cassville, Virginia?—A. I do not recollect.

By same:

Q. After John M. Rice returned to Louisa, is it a fact, or not, that he remained at Louisa, at home, during the war, and while Louisa was the headquarters for General White, Colonel Gallup, and others, and was not Louisa continued from 1862 to the close of the war to be held by the Federal troops?—A. After John M. Rice returned home to Louisa, Kentucky, he remained there during the war. Louisa, Kentucky, continued to



be occupied by Federal troops from 1862, or 1863, until the close of the war, with the exception of a short time when Colonel Craner left there.

By same:

Q. You will state if you resided in Louisa during the war, and after John M. Rice returned, stated by you, to Louisa, when the Sixty-eighth Regiment of Enrolled Militia of Lawrence County was called into active service in aid of the Federal forces in Eastern Kentucky; if so, you will state if John M. Rice did not belong to said regiment and do active service. If an officer, state in what capacity he acted.—A. I lived at Louisa, Kentucky, during the war. John M. Rice was in Louisa, Kentucky, when the Sixty-eighth Regiment Enrolled Militia was called into service, and he was there with the Sixty-eighth Regiment of Militia, and he, the said Rice, was recognized as quartermaster of said regiment by the regiment.

By same:

Q. Did or not said Sixty-eighth Regiment add and give very material aid to the Federal forces then in need of help on the Sandy River during the time of their organization?—A. They did. There was a great many hardships put on said regiment.

By same:

Q. What has become of John Keller, the man you have spoken of that made the cartridge-box for Rice?—A. He is dead.

By same:

Q. Who was present at the time you had the conversation with Rice, detailed by you, in which Rice asked you to make a saber? If any person, state who. You will also state if you was not well known and recognized by all persons from the commencement of the difficulties as a *strong* Union man, dead down against rebels and sympathizers.—A. I think John Keller, William Stephson, John M. Rice, and myself was the only persons who presence at the conversation. When the same took place Stephson was a saddler in the shop of Keller. I was a strong Union man during the war, down on rebels and rebel sympathizers.

By same:

Q. Is it not a fact that about the commencement of the war there was a malignant feeling existing between Union men in Kentucky and southern sympathizers, and this feeling particular about Louisa, that prudence required the weaker party to leave; that arrests had been made of those regarded as southern men about Catlettsburg, and threatened about Louisa by the Federal forces?

(The contestant, by his attorney, objected to this question as incompetent.

J. D. JONES, N. P. B. C.)

A. There was some hard feelings existing between the Union men and rebels and rebel sympathizers in Kentucky when the war broke out. It was no more so about Louisa, Kentucky, than other places in Kentucky. I suppose it was a general feeling. I do not know that prudence required the weaker party to leave, but a good many persons did leave. There was some men arrested who lived at Catlettsburg, Kentucky, who were brought to Louisa, Kentucky, and put into jail. I think there were persons who resided at Louisa, Kentucky, threatened of being arrested, to some extent, by the Federal forces.

JOHN PIGG.

The contestee offers the testimony of Charles Wilson, page 67, C. R. Wilson, page 68, and Goram Wilson, page 70, to discredit the witness John Pigg, but by looking into their testimony it will be found that they were unfriendly with Pigg; and by looking to the evidence of B. Burk, John H. Ford, William Pugh, James M. Frazier, A. C. Hailey, M. A. Foster, Morris Willman, and L. T. Moore, on pages 34, 35, and 36, Pigg proves a most excellent character for truth, and, in the language of one of the witnesses, an excellent, industrious citizen. The contestee offers the evidence of Samuel Ratliff, page 47, and James Honaker, page 48, to discredit Martin Thornberry; also a copy of an indictment against said Thornberry for perjury; the witnesses say that his moral character is bad, but fail to say that he could not be believed on his oath. There is no evidence before the committee that he, the said Thornberry, has ever been tried upon said indictment; but when we look to the testimony of said witness we find the same consistent with the other testimony on the



facts so testified about. From all the facts and connections in the case, the committee are of the opinion that while the contestee did not take up arms against the Government of the United States, his presence and conduct were of such a character as to give aid and encouragement to the rebels in arms against the Government. If Mr. Rice was neutral, and was not giving aid and comfort to the enemy, why did he leave Kentucky when the rebel army left? and why did he return when the rebel army returned? Why was he afraid of the Federal Army as it came up Sandy Valley? The Federal troops were not interrupting any one unless they were aiding the rebellion. Why was he captured, and why did he say that he claimed protection as a confederate soldier, if he was not giving aid and comfort to the rebels? There was not a witness called but proved that he had early espoused the cause of the rebels, and had evinced the same in the legislature; and when all his acts and doings are taken together, there can be but one conclusion.

The proof shows that early in the war, in the fall of 1861, before the fight between General Garfield and Humphrey Marshall, on the 10th of January, 1862, the contestee refused to join the confederate army; and that some companies who had come to headquarters to join the rebel army would not go in, because, they said, such men as John M. Rice and Elliott and others would not. (See the evidence on page 62; also General Marshall's testimony on pages 74, 75, and 76.) At that time Mr. Rice, the contestee, was at home; but as the army fell back to get a better position, contestee fell back also until he reached Abingdon, Virginia, and returned when the confederate army returned, doubtless with increased patriotism, determining to recruit for the army, and was captured and taken to General Garfield's headquarters and released by the order of General Garfield on the following conditions:

HEADQUARTERS EIGHTEENTH BRIGADE,  
*Paintsville, Kentucky, January 14, 1862.*

Mr. John M. Rice, of Louisa, Kentucky, having pledged himself not to aid or abet, directly or indirectly, the confederate forces in the present war, is hereby released on his parole, and granted safe conduct into the camps and through the lines of Union troops, subject to all proper guard and police regulations.

By order of Colonel J. A. Garfield, commanding brigade:

W. H. CLAPP,  
*Assistant Adjutant General.*

Thus it will be seen that, according to contestee's own statement, he had entered into an agreement to recruit for the rebel army, was on his way to carry out fully his undertaking when he was captured, and claimed protection as a rebel officer when captured. The committee are well satisfied that the acts of contestee were well understood by the voters of said district at the time contestee was voted for, but do not agree with contestant, that as contestee was ineligible, the candidate who was eligible is entitled to the seat. The committee recommend the adoption of the following resolution:

*Resolved*, That the Hon. John M. Rice is disqualified by the third section of the fourteenth amendment to the Constitution of the United States from holding a seat in Congress, and that the seat now occupied by him as a Representative from the ninth district of Kentucky, in the Forty-first Congress, is hereby declared vacant, and that the Speaker of the House of Representatives notify the governor of the Commonwealth of Kentucky that such vacancy exists.

*Resolved*, That General John L. Zeigler contested the seat of the Hon. John M. Rice in the Forty-first Congress in good faith, and should be paid ——— dollars for expenses incurred in said contest.



## MINORITY REPORT.

Mr. Burr submitted the following as the views of the minority:

The undersigned concurs with the majority of the committee in the opinion, that in no possible aspect of this case can it be pretended that the contestant Zeigler is entitled to the seat as the representative of the ninth congressional district of Kentucky. There is no dispute on that point. The contestant himself does not claim that he received a majority of the votes cast, and no just man can dissent from the conclusion of the committee that he has no shadow of title whatever to the seat.

But the report presented by the majority of the committee concludes with a resolution declaring that Hon. John M. Rice, the sitting member, "is disqualified by the third section of the fourteenth amendment to the Constitution of the United States from holding a seat in Congress," and recommending "that the seat now occupied by him as a Representative from the ninth district of Kentucky be declared vacant;" and whoever votes for the adoption of that resolution must say upon his oath, as a member of an honorable and dignified deliberative assembly, sitting in the solemn capacity of a judge, in view of his duty to his fellow-man and his responsibility to his God, that he is satisfied *by the evidence*, beyond a reasonable doubt, of two facts: 1. That Mr. Rice has been guilty of the crime of treason against the United States; and, 2. That in taking the oath as a member of Congress, he committed willful and corrupt perjury.

These accusations, necessarily implied in the resolution reported by the majority of the committee, if supported by the evidence are sufficient to consign the accused to an ignominy inconceivably worse than death to any sensitive and honorable mind; but if false, whoever would vote to sustain them, either through ignorance of the facts or a perversion of the proofs, would deserve an infamy infinitely more detestable.

In view, therefore, of the solemn responsibility resting upon the House, with regard, not only to the character of one whose reputation among his constituents and whose conduct here indicate him to be a gentleman of the highest honor and respectability, but to its own reputation for integrity, impartiality and justice, the undersigned would appeal to every member, irrespective of party affiliation or prejudice, to give a calm and unbiased consideration to the reasons which impel him to dissent from the statements of facts contained in the report of the majority, and to protest, in the most earnest manner, against the conclusion which they express.

## A GENERAL FAILURE OF PROOF.

The contestant has been at especial pains to prove, which he has done by several witnesses, that contestee was before, during, and since the rebellion, a prominent, popular, and influential citizen of Eastern Kentucky; and, as a matter of course, if he had said or done anything at any time that could have been tortured into or construed as encouraging or aiding those in rebellion against the United States, somebody could have been found to swear to it. Yet, out of the fifty-one witnesses sworn in this case, including Thornberry, Dills, and Pigg, not one of them testifies that contestee ever advised, counseled, or encouraged a solitary individual, publicly or privately, to engage in rebellion; not one of them states that contestee ever fed, clothed, aided, or assisted in any way any person so engaged; not one of them says he ever was inside a rebel



camp, even as a spectator; but all of them who spoke of contestee at all, in connection with the subject of the rebellion, without a solitary exception, declare that they know of no aid, comfort, or encouragement ever given by contestee to those engaged in rebellion.

These facts no unprejudiced man who has read the evidence will dare to challenge. Even the majority of the committee say in their report that "*the proof shows that early in the war, in the fall of 1861, before the fight between General Garfield and Humphrey Marshall on the 10th January, 1862, contestee refused to join the confederate army, and that some companies who had come to headquarters to join the rebel army would not go in, because such men as John M. Rice, John M. Elliot, and others, would not go in.*" Yet, while making this statement, while admitting it to be the fact that Mr. Rice did not join the rebel army, and that his influence and example were such as to keep whole companies of men out of it who had left home with the avowed purpose of entering it, with an inconsistency that seems utterly inexplicable to any rational mind, and by a process of reasoning which others will find some difficulty in appreciating, they arrive at the remarkable conclusion "*that while the contestee did not take up arms against the Government of the United States, his presence and conduct were of such a character as to give aid and encouragement to the rebels in arms against the Government.*" Singular aid and encouragement, truly, when he not only refused to join them himself, but when "*his presence and conduct were of such a character*" as to prevent whole companies of eager volunteers from doing so! The rebel officers no doubt had a very different opinion of the "*character*" of his "*presence and conduct*" from that which the committee seem to entertain; and it would perhaps have been fortunate for the Union cause if the influence of such a "*presence and conduct*" had been felt oftener and in other places. But, by way of showing how much the "*presence and conduct*" of contestee "*aided and encouraged*" the rebels, and what they thought of such aid and encouragement, the undersigned calls attention to the following sworn statement of one of them, Colonel George R. Diamond, (Record, page 44:)

Q. Please state whether or not John M. Rice did or not bring down upon himself the displeasure and censure of the leaders and men in the confederate service because of his refusal to enter said service.—A. I do know that he incurred the displeasure of the confederates. I frequently heard General John S. Williams say that Rice could, if he would, recruit a regiment or brigade in Northeastern Kentucky if he would. I heard him say that such men as John M. Rice should be forced to go into the confederate service or leave the country. I have also heard other confederate officers complain of John M. Rice's not entering the confederate service.

And especially to the following extracts from the testimony of General Daniel Hager, (Record, p. 61:)

A. I am acquainted with General Humphrey Marshall, and John S. Williams, and Col. John Ficklin, who established the first confederate camp at Prestonburg, Ky., which was in the fall of 1861, and was with Marshall during that time and up to fall and winter of 1862. I was on Marshall's and Williams's staffs during that time; first on General Williams's staff, then on General Marshall's. I saw John M. Rice at Prestonburg about the time the confederate camp was established there, but it may have been before. I do not know of John M. Rice giving any aid or comfort to the confederate army or the rebellion, or those in the service of the rebellion. But I do know that he was regarded by the officers and soldiers as throwing his influence to the other side, in this, to wit: That while said camp was in progress of organizing some several companies, or parts of companies, came there for the purpose of joining the army under John M. Rice, and one or two others; and as John M. Rice would not go into the army they disbanded and went home, and the officers considered, by said act, there was at least one regiment of men lost to the confederate army, and they blamed John M. Rice and others for not going into the army, as he was considered a man of influence in the Big Sandy Valley; and those parts of companies who came there said that they had come for the purpose of joining the army, and if such men as John M. Rice and J. M.



Elliott and others would not go into the army they would not; and they disbanded and went home, and I understood afterwards that a large portion of the men went into the Federal Army.

Again, on page 61, on cross-examination, he says:

Q. State if Mr. Rice and Mr. Elliott were not, together, at that time, with Mr. Whitten, regarded ardent southern men, and anxious for the success of the rebellion. Did they not profess to be for the rebellion or southern confederacy?—A. Mr. Elliott and Mr. Whitten was, and Mr. Rice was expected to be on that side, but when it was found out that he (Rice) did not join the army, his influence was considered as thrown on the other side.

Q. Was it not rather the effect of his influence not being thrown into the right direction by his joining the ranks of the army that the soldiers and officers spoke discouragingly about?—A. It was the effect of his not joining the army, and not having anything to do with it, that the officers and soldiers of the confederate army considered that they had lost the influence of Mr. Rice, and a good many soldiers, to the confederate army, and the expression of the officers was, at least a regiment.

Thus, according to the testimony of General Hager, who was one of the most active and energetic of all who were recruiting for the confederate army in Eastern Kentucky, the "presence and conduct" of Mr. Rice, so far from giving "aid and encouragement to the enemies of the Government," actually deprived their ranks of a thousand men. Many other citations might be made from the testimony to the same point, yet the committee say this was giving such "aid and encouragement to those in arms against the Government" that Mr. Rice should be denounced by a vote of the House as a traitor in 1861, and a perjurer in 1869 when he took the oath of office.

#### FACTS MISSTATED IN THE REPORT.

Again, the majority of the committee say in their report, "*All the testimony goes to show that he was a secessionist; his influence up to his capture was on the side of rebellion; \* \* \* \* and he stated when he was captured that he had authority to recruit for the rebel service.*" To any one who has paid the slightest attention to the evidence this language must be a source of profound amazement; to the undersigned, at least, it is astounding. The truth is, out of the fifty-one witnesses examined in this cause, many of them Mr. Rice's most intimate friends and associates, with whom he had almost daily intercourse, but one solitary man states that he ever, on any occasion, heard him intimate anything like secession sentiments, and this is John Pigg, whose character is successfully impeached by the testimony of Charles Wilson, (Record, p. 67,) C. R. Wilson, (p. 68,) Graham Wilson, (p. 70,) Leo Frank, (p. 66,) James D. Foster, (p. 71,) and Richard Meek, (p. 72,) who is proven by the testimony of Frank, Meek, and C. R. Wilson to be unfriendly to contestee, and who declared his intention to do everything in his power against him. True, the majority seem to congratulate themselves that Pigg's character has been sustained by the testimony of Burk, Ford, Pugh, Frazier, Wellman, and More, and dwell with peculiar unction upon the statement of one of the witnesses, that he is an excellent, industrious citizen; yet, for some cause or other, they overlook the rather significant fact that every one of these witnesses who testify to his good character lives twenty-five miles away from Pigg's neighborhood, and none of them have known him for years, while those who impeach him are his immediate neighbors. But upon that it is, perhaps, unnecessary to dwell. Pigg says:

By contestant:

Q. You will please state anything you heard Mr. Rice say, during the rebellion, of a disloyal character.—A. When Mr. Rice was on his way to Frankfort, in the



presence of Judge Short and wife, and myself, at Louisa, Kentucky, when he (Rice) was waiting for a boat, he said that he was going to Frankfort to divide this Union. That he intended to split her wide open in the middle. That was his vote every time.

On cross-examination he says:

Q. Now you will please state the month and year this conversation took place.—A. I think it was in the fall of 1860.

So that, by his own statements, this remark, which he swears he heard contestant make "*during the rebellion*," took place before the war began. But compare this statement with that of Judge Short, who Pigg says was present, (p. 53.). Judge Short says in answer to the following:

Q. Do you remember of the contestee, John M. Rice, on his way to the general assembly of Kentucky, in December, 1860, or January, 1861, having this conversation in the presence of John Pigg, yourself, and wife, at your house, or on the river bank, viz: "That he intended to split the Union wide open in the middle." Did you ever hear him have such conversation in the presence of any person? Did you ever hear him advocate the doctrine of secession?—A. I do not remember of John M. Rice having such a conversation at any place in the presence of John Pigg, or any one else. I do not recollect that John Pigg or John M. Rice was ever at my house together at any time. I do not recollect that I ever heard him advocate the cause of secession; we might have talked about the question, but I do not recollect of his ever advocating it.

Cross-examined:

Q. What relationship (if any) exists between you and John M. Rice, either by affinity or consanguinity?—A. We are brothers-in-law.

Q. Was Mr. Rice a member of the general assembly of Kentucky, in the year 1860-'61, from the county of Pike, Kentucky?—A. He was.

Q. Did Mr. Rice ever bear arms against the United States? Did he ever give aid, counsel, countenance, or encouragement to persons engaged in armed hostility to the United States? Did he ever seek office, or attempt to exercise office, under any authority or power hostile or inimical to the United States? Did he ever give or yield a support to any pretended government, authority or power, or constitution, within the United States, hostile or inimical thereto?—A. Mr. Rice never bore arms against the United States, that I know of. He never gave encouragement, counsel, or aid to persons engaged in armed hostility to the United States, that I know of. I never saw him with any rebel troops, that I know of. He never did seek office, or attempt to exercise office, under any power hostile to the United States. He never gave or yielded support to any pretended government, authority, or power, or constitution, within the United States, hostile or inimical thereto, that I know of.

Of the great number of witnesses examined by both parties, not one except Pigg could swear that he ever heard Mr. Rice intimate a disloyal word, or utter a syllable in favor of secession. His position, as understood by all parties in 1860, 1861, and 1862, was that of neutrality. To prove this it is only necessary to cite the testimony of one or two witnesses. General Daniel Hager, whose testimony has already been noticed, says, (p. 62:)

Q. Do I understand you to say that when John M. Rice failed to join the confederate army that he was considered to be disloyal to the confederacy by the officers and soldiers thereof?—A. As to his loyalty, I do not remember of hearing that spoken of. The ground that Rice occupied was neutral, and not taking part on either side; and by this course his influence was considered as thrown to the Federal side.

Colonel Thomas McKinster, who was an officer in the Union Army, says, on page 64:

Question. Please state your age and name; if acquainted with Hon. John M. Rice, member of Congress from Kentucky ninth congressional district, say for what period you have known him; was that acquaintance with him intimate; did you see him often in 1860, and '61, '62, '63, and '64? Did you ever, in either of these years, hear Mr. Rice make a speech on political topics? If so, what did he say? If you ever heard him discuss the rebellion, give his views, give them.—Answer. My age is forty-seven years; my residence is in Lawrence County, Kentucky. I have known John M. Rice ever since boyhood, and have been intimately acquainted with him ever since he began to figure in life. I seen him frequently in 1860 and '61. At a meeting held in our



county, I believe in the town of Louisa, in the summer of 1861, he made a short speech in that meeting; in it he took the grounds of neutrality, and said that we were not responsible for the acts of the fire-eaters of the South, nor the conduct of the fanatics of the North, (something like this was his language on that occasion.) I have heard him talk of the rebellion in 1861 to '63, of the progress and failures of the war, and generally said that Kentucky ought not to have went into the war.

Q. In 1860 and '61 was not the position of neutrality advocated strongly by the Union men of the State, and did not the rebel element war upon that doctrine, and urge that the State ought at once to secede and unite her destinies with the South?

(Objected to by Zeigler.)

A. It was to my understanding, and so far as I knew; the rebel element objected to it and said that every man ought to go into the rebellion.

Q. Did you see John M. Rice often in 1860 and 1861, and did you during those years ever hear Mr. Rice utter a disloyal sentiment to yourself or others; or during these years, or since, did you ever know Mr. Rice to aid or abet the rebellion, or those engaged in, in any way or manner?—A. I did converse with him in 1860 and '61. I never heard him use any disloyal discourse at any time, either in these years or since, to my knowledge. I never knew him, in no sense of the term, to aid the rebellion or those engaged in the rebellion.

Yet the majority of the committee say that "*all the testimony goes to show that he was a secessionist!*"

As to the statements that Mr. Rice used his influence in favor of the rebellion, enough has, perhaps, already been quoted from the testimony to satisfy any reasonable mind that it is as utterly without foundation in fact as the charge that the evidence all goes to show that he was a secessionist, though the testimony of several other witnesses might be cited to the same purport, if it were necessary.

The committee seem, however, to have predicated their report entirely upon the testimony of Martin Thornberry and John Dils; and, as the pith of their whole story is contained in the following short extracts from their depositions, respectively, the undersigned presents them, side by side, in order that they may be more readily examined and compared and their worth determined.

Thornberry says:

Q. Did you assist in arresting him during the war? if so, when and where was it? Did you have any conversation with him, while he was in arrest, in reference to his connection with the so-called confederate army? and if so, state as near as you can what he said.—A. I assisted in arresting him during the late war; I assisted in arresting him the day after the battle of Middle Creek. I do not recollect the day of the month of January, 1862. It was at Anthony Hatcher's, opposite the mouth of Mud Creek, or nearly opposite the mouth of Mud, in Floyd County, Kentucky. I had a conversation with him during the time he was in arrest and at the time he was arrested. In regard to his connection with the so-called confederate army, he said if I would not let the Sowards hurt him, he would get his pistol and give it to me; he got the pistol and gave it to me. He said he had a good horse, and asked me if I would let them take it away from him? I told him no; that, he might ride it himself. As we went on toward Paintsville, he asked me if they would put a rebel or a confederate officer in jail or prison, or would they let him have the bounds of the camp or town. I said, "No, John, they would not put you in jail; they will let you have the bounds of the camp." Then he told me that he either had a confederate commission of captain, or would have in a few days. He told me that he would have taken the command of a company in a few days if you had not caught him.

Mr. Dils says:

Q. State if you have any knowledge that the Hon. John M. Rice was in any way connected with the rebel army, either in the years 1861 or 1862; if so, state all you know about his connection with the army, and how you derived your information. Did he have any office in the army?—A. All I know of Mr. Rice holding any position, or acting with the confederate army, is from what he told me himself. Mr. Rice told me, in the year 1862, after I had went his bail in a bond at Louisville, Kentucky, for his appearance before United States court, that he was very lucky when he was captured by the Union forces near Hatches, Floyd County, Kentucky; for if the boys had searched him they would have found his commission and recruiting papers; but they did not do so, and he destroyed them the first opportunity he got. He also said, if General Garfield had got those papers he was satisfied he would have been sent off to some prison.



It will be borne in mind that neither of these witnesses testify to any disloyal act of which Mr. Rice was guilty, to their own knowledge; all that either of them pretends to do is to detail their understanding of a verbal admission made to them seven or eight years before they gave their testimony; and giving them all credit for an honest intention to tell the truth, ought their evidence to justify the conclusion arrived at by the majority, or the adoption of the resolution reported by them?

1. In the first place, testimony of mere verbal admissions is universally admitted to be the weakest character of evidence known to the law. The liability of the human mind to misunderstand, to misrepresent, and to forget, suggests that such evidence should be received with great caution under any circumstances, but especially when a man undertakes to repeat words said to him in a casual conversation seven or eight years before. The books abound in decisions recognizing this principle by the judiciary of the country, but it commends itself so directly to the common sense of every just man that no citation of authority can be necessary to support it. Were the offense charged against Mr. Rice no more, therefore, than the most trivial misdemeanor, involving no more than the loss of a few dollars, no man of ordinary notions of justice could find him guilty upon such evidence.

2. The statements of Thornberry and Dils are so obviously and glaringly inconsistent with each other that one or both of them must be false. Thornberry represents Mr. Rice as openly avowing to his captors while in custody, that he either had or would have a commission as an officer in the confederate army, and claiming exemption from close confinement in prison on that account alone; while Dils has him congratulating himself that his captors did not discover that he had such a commission, and ascribing his escape from actual durance to the very fact that he had destroyed his commission, and thus eluded the vigilance of those who held him in arrest! One or both of these stories must be false; can any one determine which, if either of them is true?

3. That Thornberry's statement is false, whether honestly believed by him to be true or not, must be obvious to any one who will reflect upon it for a single moment. He arrests Mr. Rice, and delivers him over to General Garfield, the commanding officer. Why? Manifestly to have him imprisoned or punished accordingly as his conduct might seem to require. He would therefore very naturally have told General Garfield every fact tending in any way to show his prisoner's connection with the rebel cause. He would have done so to justify his own conduct in arresting him, if for no other reason. But when he delivered Mr. Rice to General Garfield, did he say that Mr. Rice had just told him that he was, or expected soon to be, an officer in the rebel army, or that he had a commission from the confederate government? Not a word of it! For the result of the investigation by General Garfield was his granting to Mr. Rice the following letter of safe conduct:

HEADQUARTERS EIGHTEENTH BRIGADE,  
*Paintville, Kentucky, January 14, 1862.*

Mr. John M. Rice, of Louisa, Kentucky, having pledged himself not to aid or abet, directly or indirectly, the confederate forces in the present war, is hereby released on his parole, and granted safe conduct into the camps and through the lines of Union troops, subject to all proper guard and police regulations.

By order of Colonel J. A. Garfield, commanding brigade.

W. H. CLAPP,  
*Assistant Adjutant General.*

But what would have been the consequence had it been intimated to General Garfield that Mr. Rice either had or expected shortly to have a



commission in the rebel army? Let the following extracts from the evidence answer. Hon. Lionel A. Sheldon, member of the present Congress, who was present, as lieutenant colonel of the regiment, while Mr. Rice was being examined before General Garfield, says:

Q. Was anything said by any person examined by General Garfield, in your hearing, as to whether Mr. Rice had made any statement that he had or expected to have a commission in the rebel army?—A. I think not; I have no recollection of any such thing; and my belief is that if anything of that kind had been said, or anything looking to it, Mr. Rice would have been sent to Camp Chase; that is my belief. General Garfield was very rigid in that respect, and I am very sure that if there had been anything of the kind said Mr. Rice would have been sent to Camp Chase.

By Mr. BURR:

Q. You were in the regiment at that time?—A. I was during the entire campaign.

Q. You became conversant with the charges against Mr. Rice, so far as to make it clear to your mind now that there was no testimony that he had made any admission of having a commission in the rebel army in his possession, or that he expected one?—A. My impression is very decided that there was nothing in any of the statements made looking to any such fact; while I cannot remember specific statements made, I am clear as to the result that he would have been sent a prisoner to Camp Chase if any such statement had been made.

Q. Was there any unwillingness manifested upon the part of witnesses against Mr. Rice to state anything that would be to his disadvantage?—A. I think not. The feeling at that time was exceedingly bitter. My experience was that men did not have to be pressed very much to tell anything they knew against a man occupying a position on the other side of the conflict that was going on. There was an exceedingly bitter state of feeling in that country on both sides.

General Garfield himself testifies as follows, and no one can read his statements without being struck with the strong corroboration they afford to testimony of the other witnesses who testify as to Mr. Rice's peremptory and persistent refusal to have anything whatever to do with the rebellion. He says:

By Mr. CHURCHILL:

Question. You were in command in the State of Kentucky in the latter part of the year 1861, and the early part of the year 1862?—Answer. I was in command at that time in the Sandy Valley district of Eastern Kentucky.

Q. While in command there, was Mr. Rice, now the sitting member from the ninth district of Kentucky, taken prisoner by a portion of your force?—A. He was not taken prisoner by any portion of my force. He was brought as a prisoner by some citizens of Kentucky to the headquarters of my command.

Q. Did you make any examination at that time in respect to his conduct in regard to the conflict that was going on?—A. Yes, sir; I did.

Q. State whether Mr. Martin Thornberry was examined by you in connection with the matter?—A. I cannot say whether his name was Martin. Mr. Thornberry was the principal person concerned. I believe there were two or three with him. I know I examined him in regard to his reasons for arresting Mr. Rice and bringing him before the commanding officer.

Q. What were his statements in that regard?—A. It is so long ago that I cannot give them with anything like verbal accuracy. I can only say what was my custom generally, and what I remember now concerning this case. I asked Mr. Thornberry to tell his story; to tell why he brought Mr. Rice there, and to state what he knew about his conduct. My purpose was to examine him so far as to satisfy myself whether the case was one that, as a military officer of the Government, I should take cognizance of. He stated that Mr. Rice was a member of the Kentucky legislature. That fact, at that time, to my mind, seemed to be *prima facie* against Mr. Rice, so far as his loyalty was concerned. Still, I did not consider it as conclusive. I asked Thornberry whether he had any evidence that Mr. Rice belonged to the rebel army. He stated he found him twelve or fifteen miles south of my encampment, and in the neighborhood where the rebel army had recently been. Whether he stated that he found him actually within their lines, I do not remember; but their lines had very recently been pushed further south, as the result of a battle which occurred on the 10th of January, 1862, near Prestonburg, twelve miles south of my headquarters. Mr. Rice was brought to me about the 14th of January, 1862. I further examined him as to any evidence he might possess that Mr. Rice belonged to any rebel force. There was no evidence given to me that he belonged to the rebel army, nor that he had done any overt act which would justify me in regarding him as a soldier or an enemy. After hearing what Mr. Thornberry had to say, I think (without being perfectly certain) that I examined one or two of the persons who



came with him. I do not remember their names nor the details of their evidence; but the result of my examination was, that I did not find sufficient ground to hold him as a prisoner, or to send him to Camp Chase, Ohio, where I sent our prisoners of war.

Again, he says:

Q. The result of your examination was giving him a letter, was it not?—A. Yes, sir. If the committee will allow me I will state how I disposed of persons arrested by citizens or by my own troops. If I found satisfactory evidence that they were in actual communication with the rebel army, and aiding the enemy, I sent them to Camp Chase, at Columbus, Ohio, as prisoners. There was a second class against whom the evidence was not so strong, but sufficiently strong to lead me to suppose that they were at least likely to take an active part against us. With such I adopted the plan of requiring them to give bonds, and take and subscribe an oath not to take any part against our troops. These bonds required that if they were found committing any overt act, it was a confession of the forfeiture expressed in the bond. A third class I required to give their word of honor that they would not take any part against the United States, but would remain peaceable citizens. To these I gave a written discharge. Such a paper I gave to Mr. Rice.

Q. Is the paper printed on page 54 of the evidence such a paper as you refer to?—A. Yes, sir.

4. The question at issue is not whether Mr. Rice *said* to Thornberry and Dils, or either of them, that he had a commission in the rebel army, but whether in point of fact he actually had it. Even if it be conceded, therefore, that he made the statements testified to by them, the question still recurs "did he really have, or seek such a commission?" That he did not the proof shows, even to the exclusion of a reasonable doubt. In the first place, granting that he made the statements attributed to him, whether in jest or in earnest, they were not under oath, but on taking his seat as a member of this House he solemnly and deliberately swore that they were not true, so there stands his sworn statement against one unsworn, and if either is to be believed as to whether the *fact* under investigation existed or not, his statement under oath should be believed in preference to the other, for the law, moral and civil, presumes every man innocent of a crime until he is *proven* to be guilty. But, waiving that consideration, the *fact* that he had a *commission* as captain or lieutenant in the rebel army could not have been true, whether stated by Rice, Thornberry, Dils, or anybody else, simply because *no such commissions existed in that army*. None were issued to captains or lieutenants, but all officers of those grades were simply *enrolled* as such by *order*. In proof of this, read the sworn statement of M. J. Furgeson, who rose through the various grades to the office of colonel in the confederate army, and who speaks, not only from his own experience but from information received directly from the confederate secretary of war; he says:

Q. Say whether or not you ever recruited one or more company or regiments for the said army; and if so, did you procure commissions for the officers, or did the confederate government issue commissions to recruit companies, or to captains of companies after they were recruited? State all you know about the custom or practice of the confederate authorities as to granting commissions to officers in their army; state all you know about it.—A. I aided in recruiting one regiment of cavalry, and procured commissions for the field and staff officers. The regiment was recruited in August and September, 1862, and the commissions of the field officers bore date from 19th of January, 1863. Under the directions of my superior officers I organized other regiments and battalions, including the fourteenth and seventeenth Virginia cavalry and the thirty-sixth and thirty-seventh Virginia battalions. I recruited a company, and was captain commanding battalion before the organization. From my acquaintance with the manner of recruiting in the confederate army, it was by letter of authority from the general commanding a district or department, or from the secretary of war, and not by commission. I do not know that company officers ever were commissioned; the field and staff officers were commissioned; the company officers, so far as I know, were enrolled as officers by order only. This embodies about all I know about the custom in that respect.

Q. If you were conversant with the custom, acting, and doing of the confederate secretary of war as to issuing commissions, please say what you know about it; if you ever did any business of this character in the confederate war office, say what it was,



and when it was, and what was done.—A. I know nothing of the customs or doings of the secretary of war, except in reference to the particular business of which I have spoken. I procured the commissions of which I have spoken in January, 1863, at the office of the secretary of war, in Richmond, Virginia. I was informed by the secretary of war that company officers were not commissioned; and I have no knowledge that my company officers were ever commissioned.

Read also the testimony of George R. Diamond, who, like Ferguson, was promoted through the several grades to the office of colonel in the rebel army. He says:

Q. State whether or not you at any time recruited one or more companies for the confederate service; and if so, when?—A. I did; I recruited four companies in the latter part of 1863 and the fore part of 1864, and assisted in recruiting one company in the fall of 1861.

Q. State whether or not you ever received a commission or commissions to recruit said companies. Was a commission ever issued, to your knowledge, by the confederate government to recruit a company? How low an officer in rank in the military service received commissions in the confederate army, if you know?—A. I never had a commission to recruit a company; the only authority that I ever had was an order from my commanding officer. No commission was ever issued to recruit a company in the confederate service to my knowledge. My understanding was that no officer under the rank of colonel ever received a commission from the confederate government or secretary of war; the muster-roll showed the rank of the company officers, and the said rolls of the company and regiment, together with the reports of the commanding officers to the proper authority, showed the rank of the regimental officers. I never had a commission as major, or as lieutenant colonel, but was promoted by order of General Breckinridge, as before stated, to the rank of colonel, in the year 1865.

Again, read the statements of James Honaker, who was a captain in the confederate army. He says:

Q. Was you or not a captain in the confederate service? If so, did you have a commission, or was that grade of officers commissioned by the so-called confederate government?—A. I was a captain, and had no commission. There was none of the officers of that grade that I heard of. Our company was organized and then they elected the officers themselves, and that was all that was about it.

5. But even granting that captains and lieutenants in the confederate army *were* commissioned, the statement that Mr. Rice either had a commission in, or authority to, recruit, or that he ever agreed or consented to recruit for, the rebel service, is shown by the evidence to be utterly false; for while no human being has been found to swear that Mr. Rice ever *sought* a position of any kind in the rebel service, or solicited or advised a solitary man to enlist in it, the proof is clear and positive that he peremptorily refused to accept such a position when urged to do so by others. If any one doubts this let him read the following statement in the evidence of George R. Diamond:

Q. State whether or not you know of the command of a company being tendered to Rice in the confederate service, and say whether or not he accepted or declined to accept it; and if so, when and where was it?—A. In October or November, 1861, there was a company temporarily organized at Prestonburg by John Sparks. In that organization Jesse Meek was elected first lieutenant and myself second lieutenant, and for some cause I do not remember Sparks left the company. Meek and myself went to Freez's hotel in Prestonburg to see John M. Rice, and tendered him the command of the company, and he refused to accept of it. I then took a portion of the company and attached it to a company that was being organized by Hawkins, who was afterward captain. After Rice's declination Meek left the company and returned to his home in Louisa.

Here, when the rebel army was in process of organization, when the excitement was at its height, and the friends of the rebellion were elated with hope, before they had ever met with a reverse, the first and second lieutenants of a company already recruited and organized seek Mr. Rice at his hotel and voluntarily tender him the command, which he promptly refused, whereupon one of them abandoned the cause and went home. If this is not sufficient, recur to the testimony of General Daniel Hager, already quoted, in which he swears that, so far from Mr. Rice seeking or



obtaining a position in the rebel army, he absolutely refused to have anything to do with it, and in consequence of his refusal a whole regiment of men returned to their homes, the greater part of whom afterward enlisted in the Federal Army. Or if that is not sufficient to show conclusively that Mr. Rice had nothing to do with the rebel army in any way whatever, the following statements, to be found in the testimony of General Humphrey Marshall, surely will. General Marshall says:

When my troops arrived near Prestonburg, in December, 1861, I went in person to that village, and remember to have seen Mr. Rice, the contestee in this case, at Friend's tavern, in Prestonburg, on my visit there. He was not connected with the confederate army in any way. I thought he ought to be, and urged him to exert himself in raising a command; but he declined; at least he took no step in that direction. I remember this because I remember my solicitude upon the subject, as I knew the influence of his family in the mountain counties of Kentucky, and I was anxious to avail our cause of the benefit to result from such an accession. I failed to secure it in the person of Mr. Rice, and thought he was acting badly to refuse to give his services to a cause which then commanded my best wishes, and to which I was devoting my own energies. Mr. Rice did not connect himself with the confederate army while I was in command—at least not with that portion of it operating in Southwest Virginia and Kentucky. Had he done so I should certainly have known it, and I did not know of it, never heard of it, and do not now recognize any service rendered to the confederate cause by Mr. Rice, by personal service, or by correspondence, or information given or conveyed, or connection in any way. I do not remember to have seen John M. Rice again after I left Prestonburg. I fought with Colonel Garfield, within four miles of Prestonburg, 10th January, 1862; and Rice was not with my forces, nor did he yield any assistance to me. After that fight I rested at Martin's Mills (eight miles from where he fought) until some time in February, (after the battle at Donelson,) when the confederate secretary of war ordered me to fall back into Virginia, which I did. I never saw or heard of John M. Rice during that winter, or afterward, during the war, that I can remember, though I had intercourse with great numbers of the mountain people.

Again on being cross-examined he testified as follows:

Q. In your conversation with contestee, what opinions did he express; was he, at the time or times when the conversation or conversations between you and he occurred, in sympathy with the confederate cause? Did he express sympathy for the confederate cause; and if so, what did he say in that particular?—A. I am under the impression that our conversation did not enter upon the discussion of the subject. I was at Prestonburg one night and most of the next day. I saw Mr. Rice at the tavern shortly after my arrival, and I suggested my desire as to what his course should be. My recollection is he had some other business which led him in a different course from that I desired him to take, and that I became assured he would not take the course I desired, and did not urge him further; indeed, I have an impression on my mind that Mr. Rice was polite at our meeting, but did not seek to prolong our interview, and that our conversation was casual. It is my desire in the case that I remember, and its failure, rather than anything he either said or did. I know he did not come into my wishes, and so we parted. I don't remember anything he said so as to repeat even its substance.

Q. Did he announce to you then that he was a Union man and opposed to the success of the confederacy, or anything to that effect?—A. I have already said I cannot repeat even the substance of what he said; but I have no memory of his expressing his devotion to the Union or opposition to my course; if I had any recollection of what he did say, I should have stated it. If you want to know what impression is upon my mind, I will say that I have an impression that Mr. Rice was at Prestonburg, because it was more comfortable to him about that time, as one who did not mean to be a combatant, than Pikeville, or more advanced positions, and that on meeting me he did not in the slightest degree abandon his determination to avoid taking part in the strife going on. I don't believe he went into a report of his opinions to me as to the merits of the controversy.

Q. But you did urge the contestee to unite with you in securing confederate success?—A. I think it probable I did express, in the most forcible language and manner of which I was capable, my own view of the situation, for that was the policy on which I was acting at the time; but what the contestee said in reply I do not recollect at all. I only remember he convinced me that I had no chance to engage him in our cause, and that I regretted at the time that I could not.

In view of all these facts and circumstances every unprejudiced mind must be struck with amazement at the assertion of the committee, that Mr. Rice "had entered into an agreement to recruit for the rebel army,



and was on his way to carry out fully his undertaking, when he was captured and claimed protection as a rebel officer when captured." Indeed, it seems beyond the limits of possibility that a conclusion more entirely at variance in every particular with the facts proven could have been reached. So far from agreeing to recruit for, or even desiring a position in the rebel army, he refuses the command of a company when they were in the full tide of hope and excitement, and brought down upon himself the condemnation of both officers and men because his refusal to embark in the cause induced whole companies to abandon it. Urged by the commanding general, with every inducement that could be held out to him, to take a position in the rebel service, he still firmly and persistently adhered to his determination to have nothing to do with it, and yet it is asserted that he was on his way home, right into the midst of the victorious army of General Garfield, to recruit for the beaten and shattered ranks he had refused to enter when in the full flush of pride and hope! But what is more astounding still is the assertion that he "claimed protection as a rebel officer," when both General Garfield and Colonel Sheldon swear that if it had even been intimated that he had a commission as such, he would have been sent to Camp Chase instead of being released, as he was, upon his single word of honor, as a peaceful and law-abiding citizen! In fact, the whole of Mr. Rice's conduct, as shown by the proof, is utterly inconsistent with the idea that he had any intention, at any time, of giving any aid or encouragement to those engaged in rebellion from the time he left home until his return.

#### WHY RICE LEFT HOME.

In the fall of 1861, Mr. Rice resided in the town of Louisa, in Lawrence County, where he still lives. He had a short time before removed from Pikeville, about seventy miles off, where he had for some years been engaged in the practice of the law, and where he had a considerable amount due him, as appears from the evidence of Dills, Burns, Thornberry, Cecil, and others. Why he left home and went to Pikeville, and why he did not immediately return, all clearly appears from the following statement of Mr. A. A. Willman :

Q. Please state whether or not yourself and others and said Rice went together to Prestonburg, Kentucky, in September, 1861; and if so, do you know for what purposes he went there and whether or not it was his intention to return or not?—A. Myself, John M. Rice, and Malissa Franklin went to Prestonburg together, about the middle of September, 1861; the business of John M. Rice was, as I understood, to collect money; he had no money with him, and tried hard to get money before I agreed to go with him; he promised to return with me and he said he would; his conversation all the time before we got there was that he would return with us; a short time after we got to Prestonburg, his sister, Amanda Rice, came there with the intelligence that her father, James M. Rice, George B. Poage, and Samuel Short, two of John M. Rice's brothers-in-law, had been arrested by the Federal authorities; and after John M. Rice had learned these facts, as I learned from him, that he did not intend to return until his wife sent him word that it was safe for him to come home, and he requested me to tell his wife to send him word when it was safe for him to come home.

This statement as to Mr. Rice's object in leaving home is corroborated by the testimony of other witnesses, which it is, perhaps, unnecessary to repeat here, and effectually disposes of the statement of John Pigg, that Mr. Rice told him before he left home that he was going to Prestonburg with the expectation of getting a commission in the rebel army. But if anything else were needed to show that this statement of Pigg was "made out of whole cloth," it is found in the fact that Rice reached Pikeville, twenty-five miles beyond Prestonburg, three or four weeks before the rebels even reached that place, and when no one knew



there would ever be a rebel there, as appears from the following extract from the testimony of Hibbard Williamson :

John M. Rice came to my house in the town of Pikeville, in the fall of 1861, some three or four weeks before Colonel John S. Williams came to this place; he boarded with me about two weeks, and then he went off, and he was never in the town of Pikeville until after Colonel Williams came to Pikeville, and he was sent for by Jake Rice's wife; Jake Rice was taken sick, and we all thought he would not live, and he was sent for to come and see his brother.

Having learned from his sister, on his return to Prestonburg after his visit of two weeks to Pikeville, that it was considered unsafe for him to return home, he remained in Prestonburg until sent for to see his sick brother, when he again returned to Pikeville, as stated by Williamson. On this visit he found the rebels at Pikeville, but as he only went there to see his brother, who was not expected to live, he did not abandon his intentions to return home as soon as possible, as appears from this statement extracted from the testimony of Jake Rice :

Q. If you know, state what was John M. Rice's intention, when he came to Piketon and up to the date of his arrest, as to returning home when he was assured he could do it in safety.—A. I heard him express himself frequently that he would return home as soon as he thought he could do so in safety, and that he intended to do so as soon as he could have the assurance that he could do so in safety.

#### WHY DID RICE GO TO VIRGINIA ?

The committee ask why Mr. Rice went into Virginia in advance of the rebel army? This is readily answered by the following extract from the testimony of C. Cecil, jr. :

Q. Do you or not know of John M. Rice, with other non-combatants, upon the approach of Nelson and his forces near Pikeville, leaving and going out to Virginia? and if you know, state the cause that induced this action in the people.—A. John M. Rice and myself, together with others, on the approach of Nelson and his forces, left and went out to Virginia; my reason for going was the rumor and personal enemies that was with Nelson and his forces; I did not think it was safe to fall into their hands. The rumor was that they were treating the citizens very badly; was killing or would kill them, or many of them. From the conversation that I had with Rice the same reason induced him to go to Virginia that induced me.

Q. Is it or not the fact that during the organization of the Federal forces on Sandy, and before they were officered and disciplined, that they were dangerous, and disposed to maltreat non-combatants of those who were not in the service, or who differed with them in politics; and whether it is not the fact that lawyers, as a class, were, as a general thing, hunted down and maltreated by those who had been prosecuted for crime, or those who had been in litigation, and whether or not Nelson's army was composed of a great many of that class of soldiers?—A. In answer to first part of interrogatory No. 11, it was. To the second part of interrogatory witness answers in the affirmative. In answer to third part of said interrogatory witness says that there was many of that class of persons with Nelson's army from Pike County.

Colonel Sheldon says in his testimony :

It seemed to me that there was a class of people in that valley who took advantage of the revolutionary times to satisfy their private vengeance.

Mr. Thornberry says :

He, Mr. Rice, was in danger, but I don't regard that he was really in danger from any of the Sowards except Thomas J. Soward. But I think he was in danger from T. J. Soward. He might have been in danger from Lewis Soward, but I don't know.

Having gone to Virginia merely to avoid personal danger, and, moreover, having avoided all connection with the rebels while there, as the proof fully shows; having gone as a citizen, and returned as a citizen, it is strange that the committee should seek to torture such circumstances into evidence of guilt on the part of one whom the facts, as proven, acquit of even a suspicion of participating in the rebellion, or of any intention or desire to do so.

In view of the whole case, the undersigned feels satisfied that every



fair-minded man must conclude that the sitting member is as free from any disqualification by reason of the third section of the fourteenth amendment to the Constitution of the United States as any member of the House. He therefore submits the following resolution :

*Resolved*, That Hon. John M. Rice is justly entitled to his seat as representative in the Forty-first Congress from the ninth district of the State of Kentucky.

ALBERT G. BURR.

### EGGLESTON vs. STRADER.

The acts of a *de facto* officer, where they concern the public, are as effectual as those of an officer *de jure*.

It takes but little to constitute an officer *de facto* so far as the rights of the public are concerned.

Where a person acted illegally as an officer of election and there was no suspicion of fraud, it was held that the election was valid.

The report was adopted without debate or division.

May 23, 1870.—Mr. Hale, from the Special Committee of Elections, made the following report :

*The Committee of Elections, having had under consideration the contested election case of Benjamin Eggleston vs. Peter W. Strader, submit the following report :*

The first congressional district in Ohio embraces thirteen wards in the city of Cincinnati and certain townships and precincts outside. The official returns of the election held in the district for a Representative in Congress, on the 13th day of October, 1868, show that Peter W. Strader received 10,483 votes, and Benjamin Eggleston 10,272 votes, a majority for Mr. Strader of 211 votes. The certificate of election was duly given to him, and he is now the sitting member.

Mr. Eggleston contests the seat, and alleges fraud and corruption in the First and Thirteenth Wards in Cincinnati, and claims that the entire vote in these wards should be thrown out.

The main point of contest is in the First Ward, where, by the official returns, Mr. Eggleston received 683 votes and Mr. Strader 1,033 votes, or a majority over Mr. Eggleston of 350 votes. The rejection of the poll in this ward alone would overbalance the majority of the sitting member, and elect the contestant by a majority of 139 votes.

The statutes of Ohio regulating the conduct of elections are as follows :

That on the second Tuesday of October, 1852, and at every period of two years thereafter, the electors of each congressional district that now is, or which shall hereafter be, laid off and established, shall vote for a suitable person or persons to represent this State in the Congress of the United States for the term of two years, to commence on the 4th day of March next thereafter. (Act of May 3, 1852, sec. 35, Swan and Cr. Stat., p. 536.)

That all elections hereafter to be holden for \* \* \* Representatives to Congress shall be held and conducted in the manner prescribed by this act.

That each township in the several counties shall compose an election district, unless such township is now, or shall hereafter be, divided into more districts than one; the election to be held at such place in such township or district as the trustees in each township shall direct; and each ward of any city that is or may be divided into wards shall compose an election district; the elections therein to be held at such places as the members of the city council for their respective wards shall direct; and in all



elections holden under this act they shall serve as judges, and perform the duties required of township trustees in like cases. (Act of May 3, 1852; 50 Ohio Laws, 311; Swan and Cr. Stat., p. 532, secs. 15, 16.)

That if either of the trustees, common councilmen, or clerk of any township, shall fail to attend at the time and place of holding elections, or if either of them should be a candidate for State or county office, then it shall be the duty of the electors present to choose *viva voce* suitable persons, (as the case may require,) having the qualifications of electors, to act as judge or clerk (as the case may be) of the election; and, previous to any votes being received, said judges and clerk, not being a trustee or clerk of the township, shall take an oath or affirmation, which may be administered by a justice of the peace, trustee, or clerk of the township, in the following form: You, A. B., do solemnly swear, (or affirm, as the case may be,) that you will perform the duties of judge or clerk of this election (as the case may be) according to the law and the best of your abilities, and that you will studiously endeavor to prevent fraud, deceit, or abuse in conducting the same. (Act of April 2, 1869, sec. 20; Swan and Cr. Stat., p. 533.)

That in any election holden under the "act to regulate the election of State and county officers," passed May 3, 1852, in any ward of any city that now is, or hereafter may be, divided into wards, in addition to the judges of election provided for by the act to which this is supplementary, and the act amendatory thereof, there shall be chosen *viva voce*, by the electors present at the time and place of holding such election, a suitable person, having the qualifications of an elector, to act as one of the judges of such election, so that the same shall be held by three judges. The judge so chosen shall, before entering upon the discharge of his duties, take the oath or affirmation prescribed by law. This act to take effect from and after its passage. (Act of March 30, 1868, Swan and Saylor's Supplement to the Revised Statutes of Ohio, pp. 331, 332.)

#### VOTES—HOW AND BY WHOM RECEIVED.

That each elector shall, in full view, deliver to one of the judges of election a single ballot or piece of paper, &c.

Section 25, act of May 3, 1852, provides, after the poll-books are signed in the manner, &c., "the ballot-boxes shall be opened, and the ballots or tickets therein shall be taken out, one at a time, by one of the judges, who shall read distinctly, while the ticket remains in his hand, the name or names therein contained, and then deliver it to the second judge, who shall examine the same and pass it to the third judge, who shall string it on a thread, and carefully preserve the same. The same method shall be observed in respect to each of the tickets taken out of the ballot-box, until the number taken out of the ballot-box is equal to the number of names on the poll-books."

The committee, after a careful scrutiny of all the testimony bearing upon the subject, find these facts to be established:

The First Ward was known as democratic in politics, and there was an arrangement or understanding that the dominant party should have two out of three of the election judges and clerks, as in other wards and precincts.

The polls were opened at about half past six o'clock a. m., James W. Fitzgerald, republican, and James Malloy, democrat, members of the city council, being present as judges of election *ex officio*. Mr. Fitzgerald took the lead in the proceedings, and, under his charge, Charles W. Rowland, democrat, was chosen by the electors present, *viva voce*, to be the third judge of election. Three clerks were duly chosen, and the election proceeded.

The testimony shows that John C. Fiedelday, an active democratic politician, was present at or about the polls from the time they were opened. About 7 o'clock Mr. Malloy left the polls and went to his breakfast, being gone but a short time. Mr. Fitzgerald, at one point in his testimony, states it as his impression or belief, that during this short absence of Mr. Malloy, Mr. Fiedelday acted as judge in his place; but his whole examination shows that this impression was vague, and it is contradicted by the testimony of Mr. Malloy himself, Mr. Rowland, and Mr. Fiedelday.

Between 10 and 11 o'clock Mr. Malloy again announced to the other judges of election his intention of leaving the polls, giving as a reason for so doing illness in his family, and the pressure of private affairs re-



quiring his attention, and requested that John C. Fiedelday should act in his place. This was assented to by the other judges, and Mr. Fiedelday was then and there sworn in by Mr. Fitzgerald. The proposition, the assent of the judges, and the swearing in were open acts, in the presence of the people, who were there present in considerable numbers. No objection was made by any one. Both parties were represented at the time by their judges of election, the clerks, and challenging men. Mr. Rowland and Mr. Fiedelday both testified that the former inquired of the voters present if there was any objection to Mr. Fiedelday being sworn as judge, but neither Mr. Fitzgerald nor Mr. Malloy remember any such fact, and as there was no statute authority for so electing an additional judge, the point is not a material one.

That Mr. Fiedelday was openly proposed as judge of election, in place of Mr. Malloy, while he was absent, accepted by the other judges, sworn in, and that he, in public view, at once took upon himself the duties of such a judge, and was recognized as such, in the absence of Mr. Malloy, by the other judges, and by the public, are facts clearly established by the testimony. (*Vide* pages 1 to 24 and 97 to 1091 printed testimony.)

When Mr. Fiedelday was sworn in, Mr. Malloy left the polls and did not again appear until about 3.30 o'clock p. m., when he returned, acted as judge in the election for half or three-quarters of an hour, then went away again and returned at 5.30 o'clock, and remained acting as judge until the polls were closed. He was not present, after the polls were closed, at the counting and stringing of the votes. Mr. Fiedelday then assisted the judges in counting, and Mr. Robert Coleman, a well-known republican, stringing the votes. He signed the tally-sheets and poll-books of the election on the evening of the day succeeding the election, at the same time that the other judges, Mr. Fitzgerald and Mr. Rowland, signed them.

Mr. Fitzgerald, Mr. Slocum, and Mr. Hallam, (pages 13, 17, and 19, printed testimony,) testify that at one or more times Mr. Fiedelday acted as judge when Mr. Malloy was present, and Mr. Malloy himself gives some confirmation to this, (page 16, *ibid.*)

But Mr. Fiedelday (pages 104, 105, *ibid.*) emphatically denies this, and is sustained by Mr. Rowland, (page 98, *ibid.*), who says that the two never acted at the same time as judges, and would under no circumstances have been allowed to so act. It is evident that Mr. Malloy was seen about the polls for a short time after Mr. Fiedelday began to act in his place, and this may have given rise to the belief that both were acting as judges. There is no instance proved where the joint action of Malloy and Fiedelday determined the reception or rejection of a single vote.

Mr. Fitzgerald says that Fiedelday acted as judge in the absence of Malloy during the time when from five-eighths to three-fourths of the entire vote was polled, and that in disputed cases he, Fiedelday, united with Rowland, the other democratic judge, in receiving democratic votes; to which he, Fitzgerald, believed there were valid objections; but he fixes the number of these at not over twenty-five, to the best of his knowledge and belief, and he thinks that few or none of the proper republican votes were rejected.

The conduct of Fiedelday during the day is shown to have been undignified, irregular, and unbecoming an officer taking any charge of an election. When he was not acting as a judge he mingled in a crowd and electioneered for Mr. Strader. He took a bet of fifty dollars, offered by one John Kissick, who rather rashly ventured his money on Mr. Eg-



gleston. He left the polls and called back James Riley, who had once been rejected and whose right to vote was doubtful, and induced the other judges to receive the vote. He engaged in an altercation with Mr. Fitzgerald, the republican judge, gave and took the lie, and showed a familiarity with profane language by no means commendable. He was evidently in no very judicial frame of mind.

But the committee find no proof nor even suspicion of fraud in his conduct, nor indeed in the entire conduct of the poll. It was clearly conducted in a generally peaceable manner. The only disturbance shown was when Riley gave his vote, and that was not alarming. The policemen who were present testify to this.

Hon. Henry E. Spencer, who was formerly for eight years mayor of the city, says, (page 106, printed testimony:)

HENRY E. SPENCER, of lawful age, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposeth as follows:

Question 1. For how long have you resided in the city of Cincinnati, and in what ward of that city do you now reside?—Answer. I have resided here pretty much all my life, about sixty years, with the exception of two or three years. Have voted in the first ward about thirty-five years; I mean to say as long as it has been a ward.

Q. 2. What position, if any, have you held at the head of the municipal government of this city; and if any, when, and for how long?—A. I was mayor from 1843 to 1851.

Q. 3. Did you attend the polls of the first ward on the day of the election for member of Congress and other officers, on the second Tuesday of October, 1868; if so, what did you observe in the conduct of said election as to quietness and order?—A. Well, I was there, you may say, two or three hours during the day, from 9 to 10.30 in the morning, about half an hour after dinner, and about an hour before the closing of the polls. I can say truly, I never saw an election conducted with more quietness in all my life. Both parties seemed to have equal possession of the polls. There was no disorder at all while I was there, as far as I observed. I have never been at an election in the first ward where there was less disorder.

Q. 4. How did said election appear to be conducted as to fairness, and what complaints of unfairness were made at the polls?—A. I heard no complaints at all, either among the judges, challengers, or the electors. I thought it appeared to be conducted fairly.

Q. 5. Did you observe the course of voting at these polls; if so, can you say whether or not there was more scratching of tickets than ordinarily, and what names were scratched?—A. I was carrying tickets during the morning for an hour or hour and a half; I saw no scratching myself. I think those of the opposite parties who voted scratched tickets came there with their tickets already prepared. This is as far as my observation extended.

Q. 6. In what business position are you at present engaged?—A. I am president of the Firemen's Insurance Company of Cincinnati at present, and have been for the last sixteen years.

#### Cross-examined:

Q. 1. State how much of said election day you spent at the polls of the first ward.—A. Probably, altogether, three hours.

Q. 2. About how many people were there assembled around the polls while you were there?—A. From 9 to 10.30, I should think about three hundred; from 5 to 6 in the afternoon, before the close of the polls, probably seven hundred to eight hundred; rather less than more; probably from five hundred to seven hundred, as near as I could judge.

HENRY E. SPENCER.

The number of illegal votes alleged by Mr Fitzgerald to have been received during the time when five-eighths to three-fourths of a poll of over one thousand seven hundred votes was cast, twenty-five in all, is not larger in its proportion than will nearly always be charged by the minority when the election board is opposed to it in any heated election. Why, then, should this poll be thrown out?

The contestant claims that the whole day's proceedings were invalid; that there was no good nor sufficient election board; that Fiedelday was no judge, and that his acts were the acts of an usurper; and that in



consequence the whole poll should be rejected and the count be made up as though no election had been held in the first ward.

That Fiedelday was not legally elected a judge of the election, and that he could not have held the place as against Malloy, who was an officer *de jure*, is clear.

But it is well settled in law that, so far as the public is concerned, the acts of one who claims to be a public officer, judicial or ministerial, under a show of title, or color of right will be sustained. Such a person is an officer in fact, if not in law, and innocent parties or the public will be protected in so considering and trusting him. This principle will not be questioned, it is believed. The highest authorities and courts have maintained it.

In case of public officers who are such *de facto*, acting under color of office, by an election or appointment not strictly legal, or without having qualified themselves by the requisite tests, or by holding over after the period prescribed for a new appointment, as in case of sheriffs and constables, their acts are held valid as respects the rights of third persons who have an interest in them, and as concerns the public to prevent a failure of justice. (2 Kent's Com., page 295; Bouvier's Law Dictionary, *De facto*.)

In *Wilcox vs. Smith*, (5 Wendall, p. 233,) the court says: "The principle is well settled that the acts of an officer *de facto* are as valid and effectual when they concern the public or third persons as though they were officers *de jure*. The affairs of society could not be carried on on any other principle." To the same effect is the case of *The People vs. Cook*, (14 Barb. N. Y. Rep., 259.) Numerous other citations from reports and elementary writers could be given if needed.

But the contestant claims that Fiedelday was not an officer or judge *de facto*, and his counsel has made an ingenious argument before the committee on the ground that Fiedelday was an intruder or usurper without color of right, basing his argument largely upon the view that there was no vacancy in the office of judge of elections, and that there is no such officer known in Ohio as temporary judge. But he seems for the time to lose sight of the distinction between an officer *de facto* and an officer *de jure*, and some of the cases that he cites relate to the rights of claimants to offices as against other claimants which involve the question as to an officer *de jure* and not *de facto*. It takes but little to constitute an officer *de facto* as affects the right of the public. The exercise of apparent authority under color of right, thus inviting public trust and negating the idea of usurpation, is sufficient.

There need have been no vacancy in the office claimed to be holden; indeed, no such office may have ever existed. The supreme court of Massachusetts decided in *Fowler vs. Beebe*, (9 Mass. Rep., p. 231,) that the appointment by the governor as sheriff of a county that does not exist is a colorable appointment, and makes the appointee an officer *de facto* as to the public; and this though the appointment was absolutely void and not simply voidable.

It has been decided in Maine that the acts of a magistrate, under apparent right of office, will be sustained, although they were long after the commission of the magistrate had expired. (*Brown vs. Lunt*, 34 Maine Rep., 423.) To constitute an individual an officer *de facto* he must not be a mere intruder, but must be *in colore officii*. There must be some color of an election or appointment, or such an exercise of the office, and an acquiescence on the part of the public, as would afford a reasonable presumption of at least a colorable election or appointment. In the case of *The People vs. Cook*, (14 Barbour, New York Rep., 289,)



the entire question as to what will constitute an officer *de facto* is discussed. The decision of the court in that case settled the important controversy as to who had been elected treasurer of the State of New York for the years 1852 and 1853, and the decision may well be considered as a leading authority. The points raised in the case involved the validity of certain elections in different cities and towns where the same questions were raised that arise in the case now before the House. In the township of Chesterfield one person, who was supposed to be an inspector of election, was present when the polls were opened, and proceeded to appoint two other persons as inspectors, and the three acted during the day and were recognized by the public as such inspectors. It was held that the reputation and acts were sufficient, making the three persons officers *de facto*, and the vote of the township was allowed and counted.

In the Fourteenth Ward of New York City it was proved that at one time during the day of election two of the inspectors of election were absent, and that the remaining inspector appointed a person to act as inspector *pro tempore*, who was sworn, and did so act in receiving votes and deciding upon the right of persons to vote, and that he acted in some cases after the person in whose place he had been appointed had returned to the polls and resumed his duties. The poll was held to be valid and counted.

In the case of the Williamsburg poll it was shown that, the inspectors not being present when the polls were opened, a person holding no office, and having no authority, took upon himself to name three other persons, who acted for a time as inspectors, and decided upon votes until the legal inspectors arrived, and that for a time afterward there were four persons acting as inspectors. The poll was sustained, and the court say that "the fact that at one time four persons were acting as inspectors, and that the returns were signed by four, cannot affect the election."

The discussion in this case is very thorough, and the principle that statutes directing the mode of proceeding in elections are directory, and not to be regarded as essential to the validity of the proceeding, is clearly settled.

The cases cited in the opinion of the court to sustain the decision are numerous, and are from the highest courts in many States of the Union and the greatest judges in England.

The courts in Ohio have decided in the same way in 10 Ohio Rep., 511, 12 Ohio Rep., 16, and 17 Ohio Rep., 151; and the legislature of that State, in the contested case of Grosvenor *vs.* Golden, in the year 1866, refused to throw out a poll because one of the election judges was disqualified, and allowed it to be counted on the ground that the person was an officer *de facto*.

It is claimed by the contestant that the House of Representatives has, in its actions heretofore, gone upon a different principle. An examination of the various contested election cases that have come before the House will show, that while in certain instances the principle established by the decisions before cited in this report has been disregarded, yet in most cases there has been found the element of fraud, thus introducing a new question and impeaching the ballot beyond a mere technical informality.

In the case of Blair *vs.* Barrett, in the Thirty-sixth Congress, certain polls were rejected where the judges of election were not competent to act; but from the language of Mr. Dawes, who presented the report of the committee, it is clear that it was the taint of fraud in the ballot that led to such a result. He says:



Had it appeared from the evidence that the election had been fairly conducted at these precincts, and there were no traces of fraud—no taint of the ballot-box—the committee would not have been willing to have recommended the rejection of these polls. The honest electors should not be disfranchised and their voice stifled from a mere omission of the officers of election to take the oath of office.

In *Brockenborough vs. Cabell*, in the Twenty-ninth Congress, the House held that a statute regulating the return of votes for a Representative in Congress was merely directory, and that non-compliance with its provisions would not invalidate the ballot; and in the case of *Milliken vs. Fuller*, in the Thirty-fourth Congress, it was squarely decided that, although the officers of a township had been elected in a different month from that prescribed by law, and therefore were clearly no officers *de jure*, yet as they acted in good faith, and were recognized by the public, they were considered as officers *de facto*, and the vote of their township was received, thereby retaining the sitting member in his seat.

These cases show that the House of Representatives has recognized the justice and equity of the principle involved in the case of *The People vs. Cook*, and the other cases before cited—a principle that has been enforced and maintained by the most eminent judicial authorities on both sides of the Atlantic.

On these decisions, and seeking to give effect to the expressed voice of the people, as shown in the whole vote of the first Ohio district, the committee are clearly of the opinion that the poll in the First Ward in Cincinnati should not be thrown out. To disfranchise 1,700 voters who cast their ballots in good faith, at a peaceable election where no fraud is shown, upon irregularities in the constitution of the board of election, is what this committee is not prepared to recommend.

If the House of Representatives has ever, moved by partisan bias, established a precedent opposed to this conclusion, the committee have no hesitation in saying that it declines to be governed by any such precedent. It has been shown that if such precedent can be found it is also true that the contrary principle has been more than once recognized and acted upon. Even if this were not so it is never too late to do justice. That requires that the poll in the First Ward shall be sustained notwithstanding the irregularities attending it.

The counsel for the contestant, in his oral argument before the committee, did not raise any question as to the Thirteenth Ward in Cincinnati; but as objection is taken to its poll in the contestant's notice and in the printed brief of his counsel, the committee have fully considered the points there raised.

It is claimed that more votes were put into the ballot-box than there were names on the poll-book. The testimony shows that there was such an excess of nine votes, but so far from suggesting any fraud, all, or nearly all, of the witnesses account for it by the great rush upon the polls in the morning, at noon, and at evening, causing a rapidity of voting, so great that the clerks could not take down all the names. The witnesses for both contestant and sitting member testify to this.

It is also set forth in contestant's notice, that the judges of the election in this ward prevented persons from voting for contestant by rude and threatening language and conduct, driving legal voters away from the polls, and otherwise intimidating them. The committee have carefully read all the testimony bearing upon this charge, and fail to find any such violence or force as impairs the integrity of the poll. At times there was loud talk about the ballot-box, and the crowd would become excited to some extent in its movements, calling for some effort on the part of the officers to keep the way to the polls clear. Several witnesses testify that they believe that voters were kept from voting by the course



pursued by the judges of election, but the number stated is very small, varying from three to five or eight, while policemen present and other well-known citizens state that there was no such intimidation. Contestant's testimony, from page 24 to 36, and the sitting member's testimony, from page 109 to 123, of the printed testimony, show this.

It is also said that votes of persons of color were improperly rejected in cases where it was evident or proved that white blood predominated. But the republican judge of election in this ward, John N. Clarke, whose testimony was taken for the contestant, admits that in certain cases of visible admixture, the votes were admitted, and cannot fix more than four or five cases that were improperly rejected in his opinion.

In such a question, depending almost entirely upon the judgment of the officers of election, as affected by viewing the person seeking to vote, fraud should be the last thing to be presumed, and should require strong proof. Nor is there anything more than the opinion of two or three of contestant's witnesses, showing that the colored voters of his ward were deterred from going to the polls or from voting after they got there to any extent. The testimony before referred to shows that any such instances were solitary and incident to an animated election. Had every colored voter in the ward thrown his ballot for the contestant, it could not have increased his vote to the extent of one hundred, assuming that every colored man over twenty-one years of age was a legal voter. The committee do not, therefore, reject the poll in the Thirteenth Ward.

In the case of the Fourth Ward of Cincinnati, no testimony was taken by the contestant, and so far as that ward was concerned, the contest was abandoned from the beginning.

Mr. Strader's majority by the official return is 211. If every claim of the contestant is allowed, except as it goes to the rejection of entire polls, it would give him the additional vote of the twenty-five votes which Mr. Fitzgerald says were improperly rejected in the First Ward; the whole adult male colored population in the Thirteenth Ward, 100; the over-count of 9 in the same ward; and two illegal votes received—in all, 187. This would still leave the sitting member in his seat by a majority of 74.

The committee therefore report the following resolutions, and recommend their adoption by the House:

*Resolved*, That Benjamin Eggleston is not entitled to a seat in this House as a Representative in the Forty-first Congress from the first district in Ohio.

*Resolved* That Peter W. Strader is entitled to a seat in this House as a Representative in the Forty-first Congress from the first district in Ohio.

---

### BOYDEN vs. SHOBER.

There were allegations of fraud and intimidation, which it was held were not proved.

It was also claimed that the election was void, by a failure to comply with the statutory provisions concerning the manner of conducting the election; it was held that the statute was directory, merely, and in the absence of fraud, its violation should not render the election void.

The report was adopted *nem. con.*



January 16, 1871.—Mr. McCrary, from the Committee of Elections, made the following report:

*The Committee of Elections have had under consideration the case above mentioned, and have directed me to submit the following report:*

The following are the grounds of contest alleged by contestant in his notice of contest:

1. That the election for Representatives in Congress held in said district on the 3d day of November, 1868, was void, for want of a compliance with the law of North Carolina. First, in this: that the said law required that at each election precinct in the said district, there should be furnished and opened boxes separate and distinct from the boxes furnished and opened for deposit of ballots for candidates for presidential electors, whereas no separate and distinct boxes for the deposit of votes for the election of members of the House of Representatives were furnished and opened at more than some five or six precincts in the said sixth congressional district of North Carolina, but, on the contrary, the ballots by which you are supposed to have been elected were written or printed on the same slip of paper as the names of the candidates for presidential electors, and were deposited in the boxes furnished and opened for the reception of the ballots for the election of presidential electors. And for the further reason, that the said supposed election, it is insisted, was illegal and void in this: that the law of North Carolina prescribing the mode of conducting and declaring the results of the said congressional election requires the sheriffs of the several counties composing the said sixth congressional district of North Carolina, after having canvassed and ascertained the number of legal votes polled in their several respective counties, to meet at the county seat of Iredell County on a day now past, and there to canvass and ascertain the number of ballots polled in their respective counties the several candidates had received, and who had received the highest number of said votes, (if any one candidate had received such number,) and to give such candidate a certificate of his election; but if no one candidate had received the highest number of votes, but that two or more candidates had received the same and highest number of votes polled, that in that event the said sheriffs should select between those having the same and the highest number of votes, and to give such candidate a certificate of his election; whereas no such meeting of the sheriffs of several counties composing the said district has been had, nor has there been by the said sheriffs any comparison of the votes polled in their several respective counties composing the said sixth congressional district, nor has any certificate of election been given by the said sheriffs to any one of the candidates voted for at the said election, and there is no person or officer in North Carolina now authorized to canvass and compare the said polls nor to give a certificate of election. And it is insisted that the said supposed election is void for the further reason that the law required that separate judges and inspectors of the said congressional election should have been appointed to hold the said congressional election for each precinct in the said district, which was not done.
2. Fraud in attempting to mislead voters by means of a forged circular, purporting to come from the chairman of the national republican executive committee, by means of which voters were misled.
3. Intimidation and threats by which many persons who would have voted for contestant were deterred from voting.
4. Fraud practiced upon the voters who could not read, by cutting off the republican ticket the names of the republican candidates, and pasting on the names of the democratic candidates, and thus fraudulently inducing illiterate voters to vote against contestant contrary to their wishes and intention.
5. That the contestee was, at the time of his election, ineligible, and unable to take the test oath, having held the office of member of the legislature of North Carolina under the so-called confederate government and thus given aid and comfort to the rebellion.

The sitting member admitted his inability to take the test oath, and did not offer to qualify until after Congress had passed an act to relieve him from disability. (See Private Laws, second session Forty-first Congress, page 32.) The passage of this act, and the resolution of the House directing contestee to be sworn into office, disposes of the question of eligibility.

There is not sufficient proof to sustain either the second, third, or fourth grounds of contest. That a few persons were intimidated, and some others defrauded by spurious tickets and a forged circular, is more



than probable; but there is no proof to connect contestee with any of these things, and, besides, the evidence wholly fails to show that a sufficient number of votes were affected by these means to change the result. We are left, therefore, to the consideration of the first ground of contest, viz: That the election was wholly void by reason of a failure to comply with the statutory provisions concerning the manner of conducting the election.

It is said that the law of North Carolina, rightly construed, required that two ballot-boxes should have been kept at each poll, and that all ballots for member of Congress should have been deposited in one, and all ballots for electors for President and Vice-President in the other.

There seems to be some doubt as to the true construction of the statute of North Carolina, but assuming that the construction contended for by contestant is correct, we are of opinion that the statute is directory only, and that the failure to provide two ballot-boxes, and the deposit of all the ballots in one box, did not render the election void in the absence of fraud. If the ballots were freely cast, if they were honestly and fairly counted, and correctly returned, we should be unwilling to hold that a mere mistake of the election officers, as to whether the ballots should go into one box or two, should be allowed to defeat the will of the majority.

It is claimed that the certificate of election was not issued to contestee by competent authority; that it should have been issued by the sheriffs of the several counties comprising the district, and not by the governor. The law upon this subject is not cited in the record, and the point is not pressed. Indeed, it has been rendered immaterial by the action of the House in accepting the credentials of contestee and ordering him to be sworn into office thereon. We may remark, however, that the failure or refusal of the proper officer to issue a certificate of election would only render it necessary for the House to go back to the returns and poll-books and ascertain, if possible, from these, or from any competent and sufficient evidence, who was actually elected, and award the seat accordingly.

We are of opinion, therefore, that the contestant has failed to sustain the points made by him in his notice of contest, with the exception of the fifth point, which was sustained by the proof, but which was rendered immaterial by the act of Congress relieving contestee from his disability.

Your committee are of opinion that the contestant has prosecuted this contest in good faith and with reasonable cause, and that under the practice of the House in similar cases he is entitled to compensation for the expenses incurred by him.

We therefore recommend the adoption of the accompanying resolutions:

*Resolved*, That Nathaniel Boyden is not entitled to a seat in this House as a Representative from the sixth district of North Carolina.

*Resolved*, That Francis E. Shober is entitled to retain his seat in this House as a Representative from said district.

*Resolved*, That there be paid to Nathaniel Boyden, out of the contingent fund of the House, the sum of one thousand dollars in full for his expenses in contesting the seat of Hon. Francis E. Shober as a Representative from the said sixth district of North Carolina.



## SHEAFE VS. TILLMAN.

The governor of a State has no right to throw out returns.

The vote of an entire county was rejected by the committee because the county court, in violation of the law, appointed a commissioner of registration for the county. It was held that he was not even a *de facto* officer.

Where election officers did not take the oath prescribed by the law, and there were allegations of fraud, the poll was excluded.

The report was adopted, (February. 15,) yeas, 123; nays, 60.

January 10, 1871.—Mr. G. M. Brooks, from the Committee of Elections, made the following report:

*The Committee of Elections, to whom was referred the contested election case of C. A. Sheafe vs. Lewis Tillman, from the fourth congressional district of the State of Tennessee, submit the following report:*

Before proceeding to a consideration of the merits of this case, a question, preliminary in its nature, first should be disposed of. The contestee in his answer claims that contestant did not serve notice of his intention to contest his seat within the time required by statute, and his specification is as follows:

First. Because contestant did not file his notice or deliver a copy of the same in time. Respondent's certificate is dated and was issued on the 31st of December, 1868; and contestant's notice, or a copy of it, was not served on or delivered to respondent until the 19th of February, 1869, more than thirty days after the date and issuance of the certificate to respondent.

The United States statute of February 19, 1851, provides that—

Whenever any person shall intend to contest an election he shall, within *thirty days* after the result of such election shall have been determined by the officer or board of canvassers authorized by law to determine the same, give notice in writing to the member whose seat he designs to contest, &c. (9 Stat. at Large, 568.)

To decide the question raised, it becomes necessary to ascertain at what time the result of the election in the fourth congressional district was determined by the officers "authorized by law to determine the same."

Section 880 of the Code of Tennessee, page 232, provides that—

The governor and secretary of state shall, as soon as the returns are received, in the presence of such electors as choose to attend, compare the vote in these several cases, (among others for members of Congress,) and declare the person receiving the highest number of votes duly elected.

From this provision it would seem that it was the intention of the law that the governor and the secretary of state should personally meet and, in the presence of such electors as choose to attend, make a comparison of the votes. From the evidence introduced, it does not appear that this requirement of the statute was ever complied with by a comparison of the votes by the governor and the secretary of state being personally present together and performing this duty. The secretary of state in October, 1869, testified that he had not seen the governor for nearly two years; that this provision of the code had been treated as only directory by the State officers, and was understood only to require a comparison of the duplicates which ought to be in each office, and that even this had never been done by the governor and secretary of state together to his knowledge. Without deciding the question whether the above officers should personally compare the returns, unquestionably the governor and the secretary of state, by the Code of Tennessee, constitute the officers referred to in the United States



statute of February 19, 1851, above cited, and until they have made a comparison of the votes, and definitely and finally acted upon the matter, the result of the election cannot be determined in such manner as to bring a contestant within the provisions of the United States statute last above cited.

The testimony introduced, and upon which the contestee relies to show that the result of the election was determined on December 26, 1868, is embraced in the following correspondence :

SECRETARY OF STATE'S OFFICE,  
*Nashville, Tennessee, December 21, 1868.*

To his Excellency Gov. W. G. BROWNLOW, *Knoxville, Tennessee:*

DEAR SIR: At the request of Dr. Boynton, I herewith inclose to you the returns of the fourth congressional district, except Bedford County, which Mr. Tillman tells me is correct. The result from that county is, Tillman, 1,448; Sheafe, 1,046. After examining the returns, please return them to this office for future reference.

I am, very respectfully, &c.,

JESSE FRENCH, *Clerk.*

[Indorsed.]

KNOXVILLE, TENNESSEE, *December 26, 1868.*

Respectfully returned to the office of the secretary of state. I would throw out the vote of Lincoln County, as the election was held by order of the county court, and the returns made by the coroner; the law requiring elections to be held and returns made by the commissioner of registration. I would also throw out the vote in the civil districts of the counties of Coffee and Marshall, in which it appears that the judges of election had not taken the necessary oath, &c.

W. G. BROWNLOW.

The following is the reply of the secretary of state to the above letter of the governor :

SECRETARY OF STATE'S OFFICE,  
*Nashville, Tennessee, January 6, 1869.*

After a careful consideration of the law bearing upon the duty of the secretary of state, in the matter of election returns, I am satisfied that the officer has no voice in the settlement of such questions as are raised by the above indorsement of his excellency the governor.

The secretary of state being the proper custodian of one set of election returns, under section 879 of the Code, and the governor being the custodian of another set, it is the duty of these two officers to compare these two sets of returns as soon as the returns are received. The only duty of the secretary is to produce the triplicate returns in his office when the governor produces his, and compare them with each other. This comparing determines who is elected.

By section 885, the governor shall "issue" and "deliver" the commission or certificate of election. The only business of the secretary is to countersign and seal this commission or certificate, without regard to his own opinion in the case. It is not the intention of the law that the governor and secretary should constitute a board of canvassers to correct election returns. If there is any authority of this kind it is in the governor alone. These papers are, therefore, returned to the executive office for the official action of the governor.

A. J. FLETCHER,  
*Secretary of State.*

It was in evidence that there appeared in the Knoxville Whig of the date of February 11, 1869, a paper purporting to be a proclamation of the governor, also dated February 11, 1869, in which he stated that he awarded the certificate of election to Lewis Tillman as the member to Congress from the fourth district in Tennessee. The secretary of state testified that some time after the date of the proclamation he countersigned the commission to Mr. Tillman, and that until then he did not know who would get the commission.

The committee are of the opinion that if the provisions of section 880 of the Code ever had been complied with, according to the construction



given to the section by the secretary of state, yet there had been no such determination of result of the election as required by the United States statute of February 19, 1851, until after the issuance of the commission to the contestee after February 11, 1869, and therefore the notice, being given on February 15, 1869, was within the time required by statute. The committee also find that the commission was antedated.

The following counties constitute the fourth congressional district of the State of Tennessee, *i. e.*, Lincoln, Giles, Marshall, Cannon, Rutherford, Coffee, Franklin, and Bedford.

The returns from the several counties, as made by the commissioners of registration, and in the county of Lincoln by the coroner, are as follows:

	Tillman.	Sheafe.
Lincoln .....	5	554
Giles .....	561	609
Marshall .....	167	856
Cannon .....	313	171
Rutherford .....	957	839
Coffee .....	156	406
Franklin .....	248	110
Bedford .....	1, 448	1, 046
	<hr/> 3, 855	<hr/> 4, 591
It also appears that in the county of Franklin the following vote was cast, but rejected by the commissioners of registration as illegal.....	43	463
	<hr/> 3, 898	<hr/> 5, 054
Making a total vote of.....	3, 898	3, 898
Deducting Tillman's from Sheafe's vote .....		<hr/> 1, 156
Gives a majority to contestant of .....		<hr/> <hr/>

#### REVISION BY THE GOVERNOR.

Upon a revision of the vote of the congressional district, made by the governor of Tennessee, as appears by a copy of his proclamation hereto annexed and marked A, the votes of a county and parts of other counties were thrown out, as follows:

	Tillman.	Sheafe.
The entire vote of the county of Lincoln—		
The whole vote of which .....	5	554
The votes of districts numbered 1, 3, 7, and 10 of the county of Coffee.....	45	114
The votes of districts numbered 1, 4, 7, 13, and 15 in the county of Marshall .....	9	509
	<hr/> 59	<hr/> 1, 227
Which being deducted from the vote as returned by the election officers or those acting as such.....	3, 855	4, 591
	<hr/> 3, 796	<hr/> 3, 364
	<hr/> 3, 364	<hr/> <hr/>
Gives a majority to contestee of .....	432	



And upon this revision of the governor the certificate of election was awarded to contestee.

There is no law of the State of Tennessee that gives authority to the governor to reject the vote of any county or part of a county; his duty is only to compare the returns received by him with those returned to the office of the secretary of state, and upon such comparison being made to "deliver to the candidate receiving the highest number of votes in his district the certificate of his election as Representative to Congress." (Code of Tennessee, sec. 935, page 239.) If illegal votes have been cast, if irregularities have existed in the elections in any of the counties or precincts, if intimidation or violence has been used to deter legal or peaceable citizens from exercising their rights as voters, to this House must the party deeming himself aggrieved look for redress. This great power of determining the question of the right of a person to a seat in Congress is not vested in the executive of any State, but belongs solely to the House of Representatives. (Constitution United States, art. 1, sec. 5.)

The action of the governor, so far as he has thrown out the votes of counties or parts of counties, is to be disregarded, and the matters in dispute are to be settled upon the actual returns and the evidence introduced, independent of the doings of the executive. We will therefore proceed to an examination of the returns, and the evidence relating to the counties and parts of counties in controversy, and to the points in dispute in this case.

#### LINCOLN COUNTY.

#### The election laws of Tennessee require—

"That the governor of the State shall appoint a commissioner of registration for each and every county in the State," (act February 25, 1867, chap. 26, sec. 2,) by whom "the judges and clerks of all elections shall be selected and appointed in each county," (*ib.*, sec. 10,) and whose duty it is "to hold all elections." (Act February 26, 1868, chap. 51, sec. 1.)

The statute of the State of Tennessee passed February 26, 1868, sections 1 and 2, provides as follows:

SECTION 1. *Be it enacted by the general assembly of the State of Tennessee*, That the governor of the State be authorized, and he is hereby fully empowered, to set aside the registration of any county in this State, or any part thereof of said registration, when it shall be made to appear to the satisfaction of the governor that frauds and irregularities have intervened in the registration of voters in such county. The governor shall make known such fact, and set aside said part or whole of said registration, when frauds are shown to have been committed, by proclamation.

SEC. 2. *Be it further enacted*, That all acts of the governor declaring registrations in the different counties of this State by proclamation null and void, and removing the registers of said counties and appointing others, are hereby legalized, and full power given the governor to remove county commissioners of registration for dereliction of duty, frauds or irregularities; and the appointment of other commissioners of registration is hereby confirmed, together with all other acts done by him under the registration law, passed March 8, 1867, whether said act, known as "An act to amend section 2114, article 2, chapter 4, of the Code of Tennessee, and for other purposes," justified the governor in his action or not.

Some time prior to the November election, 1868, the following proclamation was published in the papers circulating in the county of Lincoln:

#### PROCLAMATION.

EXECUTIVE OFFICE,  
Nashville, Tennessee, October 19, 1868.

Whereas by an act of the general assembly of the State of Tennessee, entitled "An act to legalize the acts of the governor," passed February 26, 1868, it is made the duty of the governor, when frauds and irregularities have intervened to the registration of any county, to set aside part or whole of said registration by proclamation; and whereas it has been made known to me that frauds and irregularities have occurred in the reg-



istration of the county of Lincoln: Now, therefore, I, William G. Brownlow, governor of the State of Tennessee, by virtue of the authority in me vested, and in the discharge of the duty imposed upon me by the first section of the aforesaid act of the general assembly, do hereby set aside and declare null and void all that part of the registration of our county of Lincoln made by A. H. Russell, late registration commissioner.

In testimony whereof I, William G. Brownlow, governor as aforesaid, have hereunto set my hand and caused the great seal of the State to be affixed, at the department in Nashville, on this 19th day of October, 1868.

[SEAL.]

W. G. BROWNLOW.

By the governor:

A. J. FLETCHER, *Secretary of State*.

Upon the promulgation of the above, the evidence discloses that there was a general belief in the county that the governor, by this proclamation, removed the commissioner of registration for Lincoln County from his office, and no appointment of any commissioner having been made up to the time of the election, many voters did not attend the polls, not considering that any legal election could be held until such appointment had been made.

On the second day of November, 1868, the day preceding the presidential election, the county court for the county of Lincoln appointed one "C. S. Wilson to open and hold the election in Lincoln County, for President of the United States and member of Congress, as the sheriff, F. W. Keith, refused, in open court, to hold said election for want of time." Said Wilson, acting under this appointment, selected deputies, judges, and clerks in seven of the twenty-five districts in this county, and in those districts only were elections held, and the returns were made by said Wilson, and signed by him as coroner, by which it appears that Tillman received 5, and Sheafe 554 votes. Contestant claims that the act of the governor in setting aside the registration of Lincoln County was unconstitutional and void, and that by virtue of the provisions of the Code of Tennessee, section 839, page 226, which is as follows:

The sheriff, or, if he is a candidate, the coroner, or, if there be no coroner, some person appointed by the county court, shall hold all popular elections; and said officer or person shall appoint a sufficient number of deputies to hold said elections.

There being a vacancy in the office of commissioner of registration, the appointment of Wilson to open and hold the election was legal and binding.

It is not necessary to discuss the question of the constitutional powers of the governor to set aside a registration, for if this act of his was unconstitutional, and he had no power to set aside a registration and remove a commissioner, then there was no vacancy; the commissioner had not been deprived of his office, and he was the only person by law authorized to hold the election. But if this act of the governor did have the effect of removing the commissioner, the county court had no right under the statute to appoint an election officer; the act of February 26, 1867, ch. 26, sec. 2, above referred to, vested the appointing power of these officers wholly in the executive, and repealed all laws in conflict therewith. Wilson, therefore, held his office under no color of legal authority; was not even an officer *de facto*, but was a mere usurper, and all acts done by him as such officer were illegal and void; and when it appears that Wilson was appointed by the court only the day prior to the election, so that it would have been impossible that due notice of his appointment or of the election could have been given; that elections were held in only seven of the twenty-five districts of the county; that it was generally understood that there was no officer legally appointed to hold the elections, and that voters did not attend the polls on that



account; and when it further found that there existed in the county organizations of men, mounted, armed and disguised, and known by the name of the Ku-Klux Klan, banded together for political purposes, who, by their threats and violence, intimidated and deterred voters from attending the polls, there could not have been, and was not such a full and free expression of the will of the voters as is deemed necessary to constitute a fair election. The committee, therefore, is of the opinion that this election had no semblance of legality, and that the entire vote of Lincoln County should be rejected.

#### MARSHALL COUNTY.

The commissioner of registration of this county in his return states that in the districts numbered 1, 4, 7, 13, and 15, which gave Tillman 9 and Sheafe 559 votes, "no oath accompanied the poll-box, but all certified to be held according to law." And the evidence introduced does not disclose that the oath required by statute was taken and subscribed in the above districts in conformity to law.

The committee adheres to the principle enunciated in the contested election cases of *Barnes vs. Adams*, second session of this Congress, viz, that it is not essential to the validity of an election that the officers should be sworn, or should in all things be held to the strict requirements of the law, so far as their qualifications for the office which they hold are concerned. If it appears that there was no fraud in the election, that it had been fairly conducted, and that there was an opportunity for a full expression of the will of the voters at the ballot-box, the mere fact of the omission of an officer to take the oath prescribed by law will not vitiate an election. But if, on the other hand, the election was not fairly conducted, if there was fraud in the ballot, if it should appear that there was an organized attempt of a class of persons in the county to prevent citizens of one particular political belief from depositing their votes freely and peaceably, if intimidation was used to control the voters, and by these means there was not a full, fair, and free expression of the will of the voters at the ballot-box, then, in such voting precincts where the requirements of law were not complied with, the vote should be rejected.

In the county of Marshall the evidence declares the existence of the Ku-Klux Klan in the community. A colored man testified that for about two months prior to the election disguised men were often at his house in the night; that his house was fired into, and once he was struck by a ball; that he went into another district and voted the republican ticket; that after the election his house was surrounded, and while attempting to escape he was fired at; was told by these men that he was thus treated because he voted against them. Others testified to the existence of this band of disguised men in the county; that the organization was of a political character, and that its effect was to intimidate and deter the republican voters from the polls. From the evidence introduced the committee are of opinion that the state of affairs existing in this county precluded a free expression of public sentiment at the polls, and reject the vote of the above districts.

#### COFFEE COUNTY.

In the districts numbered 3 and 7, of this county, which gave Tillman 24 and Sheafe 87 votes, the requirements of the law in subscribing the oath by the election officers were not complied with.



The evidence shows that great fear and dread of the Ku-Klux prevailed among the republicans in this county; that through fear many republicans did not vote; that white and black republicans were whipped. One colored man stated that about one month after the election he was tied over a log and struck on the skin two hundred lashes, and was so whipped for voting the radical ticket. Another colored man testified that the night before the election his house was visited by the Ku-Klux, his windows smashed and his floor torn up, and that he voted for Sheafe through fear; others testified that the effect of the existence and lawless acts of this disguised band of men in the county was to keep republicans from attending the elections and to cause some of them to vote the democratic ticket. The requirements of the law not being strictly complied with in the above districts, and this taken in connection with the intimidation and lawless violence that pervaded the county some time before and after the election, should exclude the vote of the third and seventh districts of Coffee County.

#### FRANKLIN COUNTY.

In making his return the commissioner of registration for this county did not include the votes of districts numbered 1, 4, 10, 12, and 15, which gave for Tillman 43 and for Sheafe 463 votes, on the ground "that the votes were illegal, inasmuch as neither judges and clerks were sworn according to law, and many voted without certificates." In the first district, in which Tillman received 3 and Sheafe 293 votes, the poll-book was among the papers in evidence; no oath accompanied the same, and no statement or certificate appeared that any of the officers were sworn; testimony was introduced showing that all the officers were sworn except the one who held the election. It also appeared in evidence that some persons voted without proper certificates, and that the frauds perpetrated at the election were so flagrant that the crowd about the ballot-box regarded it as a huge joke and seemed to enjoy it as such. It also appeared that the Ku-Klux visited this district at times during the spring and summer of 1868, in various numbers, at one time from ten to fifteen, at another time from thirty to forty, and the night before the election they were present in Winchester to about the number of thirty-five; that some colored persons, through their dread of the Ku-Klux, slept in barns and out-houses away from their homes for some days before and immediately after the November election, 1868; that at first the presence of the Ku-Klux seemed only to affect the negro, but by and before the said November election, the public mind of both white and colored became more excited; that the result of their visit the night before the election was to intimidate the republicans, and that on this account voters did not come to the polls. For the above reasons the committee reject the vote of this district. In the remaining districts of this county not allowed by the commissioner, no satisfactory evidence has been introduced to justify his action in rejecting the vote.

#### IMPORTED VOTES.

The contestant alleges that "many persons not residents of the county where they were permitted to vote, voted at said election for contestee. The evidence upon this point relates to the seventh or Rock Creek district of Franklin County. Witnesses for contestant (most of them were not residents of the district, but present there at the election) testify that a large number of negroes were present at the polls of this district; that



they were not known to the witnesses, many of whom were old residents of the county, and well knew the inhabitants; that several of the negroes said they did not live in the county; that certificates of registration were handed to them with the Grant and Tillman tickets folded in them, and that from forty to sixty of these votes were polled illegally.

The commissioner of registration and one of the judges of election were witnesses for the contestee, and from their testimony it appeared that there were some forty negroes who lived in Franklin County at work on a railroad in another county, who came to this district, it being the nearest place for them to vote in Franklin County; that some of contestant's friends were at the polls and challenged such voters as they deemed had no right to vote, and that some ten to fifteen colored votes were thrown out, and that no illegal votes were polled. It was also in testimony that some fifty raiders were present at the polls with guns and with pistols drawn, and by reason of the intimidation created by the presence and actions of these men some thirty of the negroes were debarred from voting. The whole testimony is conflicting and unsatisfactory. It may have been that some persons voted for the contestee who were not qualified, and that some of the friends of contestee were, by intimidation at the polls, prevented from voting, but as neither the returns show, nor does it appear in evidence, how many votes were given for each of the two candidates, (it only appearing that the whole vote was eighty-one,) the committee do not feel justified in disturbing the vote of this district.

#### REFUSAL OF COMMISSIONER TO ISSUE CERTIFICATES.

Contestant, in his fifth and sixth specifications, claims that the commissioners "refused certificates to those entitled to them who differed from them politically, and gave certificates to those not entitled who were their political friends," and that "the commissioner signed blank certificates to other parties, who filled them with names and delivered them to parties not entitled to them." The evidence of the unlawful issuance of certificates is mostly confined to those issued and used at the election in the seventh district of Franklin County, and the determination of the committee upon the vote of that district as above will preclude the necessity of any further allusion to the evidence upon this point.

The testimony introduced tending to show that the commissioner unlawfully withheld certificates from those entitled to them is not made out to the satisfaction of the committee.

The committee have passed upon all the specifications of the contestant and counter allegations of the contestee that they deem material to the determination of this contest, and make the following

#### SUMMARY.

Tillman.    Sheafe.

Total vote as returned by the commissioners of registration, by the coroner of Lincoln County, and the vote of the districts in Franklin County returned by the commissioners as illegal .....	3, 898	5, 054
From which deduct the vote of Lincoln County .....	5	534
The vote of districts Nos. 1, 4, 7, 13, and 15 of Marshall County .....	9	539



	Tillman.	Sheafe.	Tillman.	Sheafe.
The vote of districts Nos. 3 and 7, of Coffee County.....	24	87		
The vote of district No. 1 of Franklin County.....	3	293		
	41	1,493	41	1,493
Leaves vote as follows .....		3,857		3,561
Deduct Sheafe's vote from Tillman's .....		3,561		3,561
Gives Tillman a majority of .....		296		

The committee therefore submit the following resolutions, and recommend their passage:

*Resolved*, That C. A. Sheafe was not duly elected, and is not entitled to a seat in this House as a Representative in the Forty-first Congress from the fourth congressional district of the State of Tennessee.

*Resolved*, That Lewis Tillman was duly elected as Representative in the Forty-first Congress from the fourth congressional district of the State of Tennessee, and is entitled to retain his seat as such.

*Resolved*, That C. A. Sheafe having contested the seat of the Hon. Lewis Tillman as a Representative in this House from the fourth congressional district of the State of Tennessee, in good faith and with probable cause, there shall be paid to him out of the contingent fund of the House of Representatives the sum of \_\_\_\_\_ dollars, in full for his expenses in such contest.

# A.

## TENNESSEE CONGRESSMEN.

### *Proclamation by the governor.—Votes thrown out and radicals elected.*

Whereas an election was held on the 3d of November for eight members of Congress for the eight congressional districts in the State of Tennessee, and also for one for the State at large; and whereas R. R. Butler, Horace Maynard, William B. Stokes, William F. Prosser, Samuel M. Arnell, and Isaac R. Hawkins were respectively elected from the first, second, third, fifth, sixth, and seventh districts, as members of the Forty-first Congress, by a majority ranging at from two to ten thousand, as also was John B. Rogers for the State at large; and whereas there exists no controversy in regard to the election of these gentlemen, I have this day caused certificates of election to be made out, in due form, for each of the gentlemen above named; and whereas in the fourth and eighth districts contests exist between rival candidates:

Now, therefore, I, William G. Brownlow, governor of Tennessee, do submit the following statements, and the conclusions at which I have arrived, after considering all the facts in the case:

From the returns in the office of the secretary of state, it seems that, in the fourth district, Sheafe received 666 votes more than Tillman. But, correcting the returns by the law governing in such cases, by throwing out the vote of Lincoln County, as the election was held by order of the county court, and the returns were made by the coroner—the law requiring elections to be held and returns made by the commissioner or registration; and by throwing out the vote in the civil districts of the counties of Coffee and Marshall, in which it appears that the judges of election had not taken the necessary oath, the vote for that district would stand as follows: For Sheafe, 3,363; and for Tillman, 3,795; leaving Tillman's majority 432. I therefore award the certificate to Lewis Tillman.

The returns from the eighth district show that John W. Leftwich received 6,532 votes, W. J. Smith 5,543 votes, and David A. Nunn 4,026 votes, giving Leftwich 989 majority over Smith.



I utterly repudiate the vote of Tipton County, as an exhibition of the most stupendous fraud perpetrated in the State during the late election. I also cast out the vote of Fayette County, as held in open violation of the franchise law. Besides these, a supplemental return by the commissioner of registration for Shelby County gives, for that county alone, an addition of about 700 votes in favor of W. J. Smith over Leftwich, all of which gives Smith a clear majority of over a thousand above Leftwich. I therefore award the certificate of election to W. J. Smith.

If there had been no other law to be regarded in the issuance of commissions or certificates to the members of Congress but the Code, (sec. 935,) my duty would have been quite plain. But the "act to limit the elective franchise" has been since passed. It proposes a great change—I may say revolution—in our elective system. It announces that a large portion of our people have made war upon the Government, and are unsafe depositaries of the elective franchise. It provides, moreover, for a registration of voters, and declares that no one is a legal voter unless he shall have a certificate of registration, and that certificate must be obtained in a legal way. A valid registration becomes indispensable to a valid election. With official information before me that the votes cast for a candidate are illegal, and his election void, and that the Ku-Klux Klans have used violence and other means of intimidation to deter legal voters from exercising the franchise, I cannot, and will not, certify that he is "regularly elected according to the laws of the State." Whatever others may think of my duty, I will not declare, in a certificate or otherwise, that the election was regular in counties or districts, when I officially know that it was not regular.

In these conclusions I am happily relieved of much responsibility by the fact that my decision is not conclusive. The question is still open for the decision of Congress.

In testimony whereof, I have signed the foregoing in the executive department, and affix the great seal of the State, this 11th day of February, A. D. 1869.

W. G. BROWNLOW.

#### MINORITY REPORT.

January 30, 1871.—Mr. Dox, of the Sub-Committee of Elections, made the following minority report:

*The Sub-Committee of Elections, to whom this case was referred, by permission of the House, respectfully submits the following report, which expresses the reasons for his dissent from the conclusions of the majority:*

Although dissenting from the majority of the committee in the conclusion which they have reached in this case, the undersigned is gratified in finding so much in the report of the majority to which he can give his assent.

He concurs with the majority of the committee in the opinion that the notice given by the contestant (Sheafe) was sufficient.

He concurs with the majority of the committee that the contestant received 1,156 more votes than the contestee, Mr. Tillman, for Representative in Congress at said election.

He also concurs with the majority of the committee in regarding the action of the then governor of Tennessee, (W. G. Brownlow,) in throwing out the entire vote of Lincoln County; the votes of districts numbered 1, 3, 7, and 10 of Coffee County; the votes of districts numbered 1, 4, 7, 13, and 15 in the county of Marshall, and certain districts in the county of Franklin, whereby contestant loses 1,690 votes, and contestee 102 votes, as an unlawful and arbitrary exercise of executive power, and to be disregarded by the committee. In the language of the report of the majority of the committee—

There is no law of the State of Tennessee that gives authority to the governor to reject the vote of any county or part of a county; his duty is only to compare the returns received by him with those returned to the office of the secretary of state, and upon such comparison being made, to "deliver to the candidate receiving the highest number of votes in his district the certificate of his election as Representative to Congress." (Code of Tennessee, sec. 935, page 239.) If illegal votes have been cast, if irregularities have existed in the elections in any of the counties or precincts, if intimi-



dation or violence has been used to deter legal or peaceable citizens from exercising their rights as voters, to this House must the party deeming himself aggrieved look for redress. This great power of determining the question of the right of a person to a seat in Congress is not vested in the executive of any State, but belongs solely to the House of Representatives. (Constitution United States, art. 1, sec. 5.)

The action of the governor, so far as he has thrown out the votes of counties or parts of counties, is to be disregarded, and the matters in dispute are to be settled upon the actual returns and the evidence introduced, independent of the doings of the executive.

The denial of the certificate of election to Mr. Sheafe, the contestant in this case, by the governor of Tennessee, was an act of usurpation committed, and a wrong done to the prejudice of that gentleman, without a shadow of authority by the laws of either the State of Tennessee or of the United States.

Had the law been respected by the governor, Mr. Sheafe, who was elected by the people; and whose *prima facie* right to the certificate cannot be questioned, would have been returned to this House, (which alone has the right and power to determine the questions involved in this case,) and not Mr. Tillman, who comes here elected and accredited alone by the governor of Tennessee, after being defeated by a large majority at the polls.

But while all of the members of the committee agree in the sufficiency of the notice of the contest given by the contestant, and that contestant had a majority of the votes polled, and also in the unauthorized action of the governor in "setting aside" the vote of the county and parts of other counties at his pleasure, yet a majority of the committee have found reasons which escaped even the vigilance and scrutiny of the then governor of Tennessee for denying to Mr. Sheafe the seat in this House, to which he was, in the opinion of the undersigned, most clearly and lawfully elected.

It was certainly not through inadvertence that Governor Brownlow, in determining who was elected to represent the fourth congressional district of Tennessee in the Forty-first Congress, in his proclamation omitted to notice the causes, to wit, intimidation of voters by Ku-Klux and other lawless bodies, which the majority of the committee have regarded as sufficiently established by the testimony taken in the case to warrant them in taking from the contestant 1,493 votes, and enough to elect his competitor (from whom but 41 votes are taken) by a majority of 296 votes.

An examination of Governor Brownlow's proclamation, dated the 11th day of February, 1869, more than three months after the election, will show that as ardent a republican as Governor Brownlow, who certainly cannot be charged with any lack of zeal in the service of his party, had not then learned that the intimidation of voters was sufficient to justify him in electing Tillman, who had been defeated by 1,156 majority of the popular vote in favor of Mr. Sheafe.

In order to effect that object he was compelled to resort to a revision of the returns made by his own appointees, (not one of whom has anything to say about intimidation in his return,) and to a general expurgation of the votes, rejecting the vote of one entire county (Lincoln) and of parts of divers other counties throughout the district.

That it was not through inadvertence that intimidation was not assigned by the governor as a cause for defeating the choice of the people in the election of their Representative in Congress, is evident from the fact that in the same proclamation intimidation is charged to have prevailed in another district, (the 8th,) yet it is not mentioned as a cause for disregarding the will of the people, as expressed through the ballot-box in this, the 4th district.



(See proclamation of Governor Brownlow, Exhibit A, at the conclusion of majority report.)

The undersigned therefore concludes that the charge of intimidation of voters, and of Ku-Klux outrages, affecting the election in this case, was not thought of by the governor of Tennessee, nor by Mr. Tillman, the contestee, as sufficiently sustained to warrant its use for the purposes of this contest until many months after the election in November, 1868.

The undersigned would respectfully call the attention of the House to the following propositions, which will not be controverted, and which make it impossible for him to assent to the conclusions reached by a majority of the committee in this cause:

1. No person could vote at the election in question unless authorized to do so by an officer called a commissioner of registration, who could only be appointed by the governor, W. G. Brownlow.

2. All of the officers, judges, and clerks (except in the county of Lincoln) who held this election, were either appointed by the same governor or by his said appointees, the said commissioners of registration.

3. The governor claimed and exercised the power of setting aside and annulling the registration of voters made by his own appointees as aforesaid, at his mere option and pleasure.

4. In no case did a commissioner of registration (all of whom were republicans and appointed as aforesaid by the governor) assign as a reason for the rejection of the vote of certain civil districts which gave contestant large majorities, that force or intimidation had been used to obtain such majorities.

5. The whole congressional district was occupied by Federal troops, at the request and subject to the direction and control of the said governor.

6. In Marshall County, where the majority of the committee reject five hundred and fifty-nine votes given for contestant to nine votes given to the contestee, Captain E. L. Huntington, commanding the post, with his company stationed at the county seat, (Lewisburg,) certifies as follows:

LEWISBURG, MARSHALL COUNTY, TENNESSEE,  
November 21, 1868.

*To all whom it may concern :*

Company A of the Twenty-ninth United States Infantry came to Lewisburg on or about the 6th day of October, 1868, and remained until to-day. We were in Lewisburg on the 3d day of November, and witnessed the election for President and member of Congress from this the fourth district of Tennessee. The election was very quiet; every one voted his sentiments, without disturbance or threats, both white and colored; and no one in the county, as far as we are advised and believe, voted except those who had certificates to vote under the franchise law of Tennessee. The citizens of the county are quiet and law-abiding, and treated my command with kindness and due respect.

E. L. HUNTINGTON,  
*Captain Twenty-ninth Infantry, Commanding Post and Company.*

(See evidence, page 70.)

In the opinion of the undersigned, Captain Huntington is sustained by the weight of testimony in the cause.

7. That in Coffee County, where the majority take 87 votes from contestant to 24 from contestee, it does not appear from the testimony that there had ever been a Ku-Klux, or that a single outrage had ever been committed, or that there had ever been the least intimidation of any voter in either of the two civil districts rejected, but the proof is directly to the reverse. (See depositions of P. C. Cunningham, page 5; W. P. Ford, pages 5, 6, and 7; H. S. Emerson, pages 9 and 10; and D. E. Mead, pages 13 and 14, evidence.)



8. That at Winchester, in Franklin County, where the majority of the committee reject 293 votes given for contestant to 3 votes given for contestee, for the alleged reason that "some persons voted without proper certificates, and that the frauds perpetrated at the election were so flagrant that the crowd about the ballot-box regarded it as a huge joke, and seemed to enjoy it as such," when contestee's own witness, who was one of the judges of the election and an officer in the Federal Army during the rebellion, in his deposition, denies each and every one of the above reasons for rejecting said vote as given by the majority; (see the deposition of N. W. Wilcox, page 156 of the evidence; and he is sustained by Albert Ringle, page 77, and Nathan Frizzell, pages 82, 83, and 84;) while the majority is not sustained by any witness in the cause, and can only be based upon the testimony of one witness, who had but little opportunity of knowing the facts, as he himself swore. (See deposition of J. G. McCutcheon, pages 141, 142, and 143, evidence.)

#### THE ELECTION IN LINCOLN COUNTY.

But it is claimed that in Lincoln County the election was held by the coroner, and that it could have been lawfully held only by a commissioner of registration. Upon this point the majority of the committee report as follows:

It is not necessary to discuss the question of the constitutional powers of the governor to set aside a registration, for if this act of his was unconstitutional, and he had no power to set aside a registration and remove a commissioner, then there was no vacancy; the commissioner had not been deprived of his office, and he was the only person by law authorized to hold the election. But if this act of the governor did have the effect of removing the commissioner, the county court had no right under the statute to appoint an election officer; the act of February 26, 1867, (chapter 26, section 2,) above referred to, vested the appointing power of these officers wholly in the executive, and repealed all laws in conflict therewith. Wilson, therefore, held his office under no color of legal authority; was not even an officer *de facto*, but was a mere usurper, and all acts done by him as such officer were illegal and void.

But the commissioner of registration for that county was removed by the governor, W. G. Brownlow, who neglected and refused to appoint a successor for that office, the governor alone having the power to make such removal and appointment, as has been more than once decided by the supreme court of Tennessee, the judges composing the bench having been appointed by the same governor. The power of the governor to annul a registration is another question, and will be hereafter considered.

Under the law of Tennessee, as they stood at the time of the election in question, could the people of Lincoln County be deprived of all opportunity to vote for a Representative in Congress, in the way above indicated?

It was provided by the Code of Tennessee, page 226, section 839—

The sheriff or, if he is a candidate, the coroner, or, if there be no coroner, some person appointed by the county court, shall hold all popular elections; and said officer or person shall appoint a sufficient number of deputies to hold said elections.

This section of the Code was modified by an act of the general assembly passed February 26, 1868, page 67, acts of 1867-'68, without, however, any reference to the Code in said act, and the same provision is contained in the last franchise act, which is as follows:

That it shall be the duty of the commissioner of registration of voters to hold all elections, now required by law to be held by sheriffs, and that, for that purpose, he shall have all of the powers and rights that sheriffs now possess, and be subject to like responsibilities and liabilities, and have fifty dollars per annum for his compensation, as is now allowed by law to sheriffs for similar services; all to be paid out of the county treasury.



Section 841 of the same Code provides that—

The county court, at the session next preceding the day of election, shall appoint three inspectors or judges for each voting place, to superintend the election.

SEC. 842. If the county court fail to make the appointment, or any person appointed refuse to serve, the sheriff, with the advice of three justices, or, if none be present, three respectable freeholders, shall, before the beginning of the election, appoint said inspectors or judges.

SEC. 843. If the sheriff or other officer whose duty it is to attend at a particular place of voting under the foregoing provisions fail to attend, any justice of the peace present, or, if no justice of the peace be present, any three freeholders, may perform the duties prescribed by the preceding sections, or, in case of necessity, may act as officers or inspectors.

It will be observed that neither the act of February 26, 1868, nor the franchise act, repeals said section 839, or any other of the above sections of the Code of Tennessee. Those acts simply provide that it shall be the duty of the commissioner of registration to hold the elections, have the powers and rights, be subject to the same responsibilities and liabilities, and receive the same compensation as sheriffs in discharging that duty. But if the sheriff was a candidate, or there was no sheriff, or if he refused to hold the election, then the coroner was the proper officer to hold it; and, as the commissioner of registration was, by the terms of the acts above referred to, simply substituted to the place, powers, and duties which had formerly devolved upon sheriffs, it follows that, as the office of commissioner of registration was vacant, the coroner was the proper officer to hold said election, and that the same was properly held by him.

#### KU-KLUX.

But it is claimed that there were in some of the counties of this district organized bands of men, who sometimes made their appearance in disguise, calling themselves Ku-Klux, and that the effect of this organization, and of certain outrages perpetrated by them, was to deter many of the legally qualified voters from voting, and to cause others to vote contrary to their inclinations; and this alone is assigned by the majority of the committee as a reason for rejecting the vote of certain civil districts of the counties of Marshall and Coffee.

It is submitted that, upon the evidence in this case, it is a matter of doubt which party was most benefited or injured by the operations of these men; but yielding the benefit of this doubt to the majority, how many votes is it claimed were thus intimidated? What proof is there in the record that, if there had been none of this intimidation, the majority of 1,156 for contestant could have been overcome?

Again, it does not appear from the proof that these disguised men ever attempted to influence any voter to vote for contestant and against contestee, except in one solitary instance, and that instance ought not to be an exception, because it is more than doubtful that any good was intended to contestant by the parties perpetrating this outrage, and it is certain that if it was thus intended it had a contrary effect.

But the proof does show very conclusively that contestant was an officer in the Federal Army during more than three years of the rebellion, while contestee was in neither army, and that contestant, both before and after the election, both publicly and privately, denounced and condemned this organization. This being so, why should they desire his election? And it is admitted by contestee that there was no intimidation in the election of his successor; and yet it will appear, from the abstract of the secretary of state of Tennessee of that election, which I have appended to this report, marked "Exhibit A," that Bright, the democratic candidate, received 11,827 votes, while Mr. Mullins, the re-



publican candidate, received but 1,843 votes. It is true that many of the citizens of Tennessee have been enfranchised since the election in controversy, but all can vote now who could vote then, and yet Mullins's vote in 1870 is 2,055 less than the vote for Mr. Tillman in 1868.

“SETTING ASIDE” THE REGISTRATION.

Furthermore, the proof shows that in one county alone (Lincoln) there were between 1,500 and 2,000 voters excluded from the polls by the action of the governor in “setting aside” the registration of voters by proclamation; and that many more were prevented from voting in two other counties, (Franklin and Coffee,) by the same cause. It is admitted by the contestee in his answer, that these voters thus excluded from the polls, if they had been allowed to vote, would have voted for contestant. *Was the governor authorized thus to “set aside” the registrations and exclude these voters from the polls?* The supreme court of Tennessee—each of the three judges who composed the bench having been appointed to his high office by Governor Brownlow—each in a separate opinion, and all concurring, decided in the case of *The State of Tennessee vs. William Staten*, (6th Caldwell's Reports, page 234,) that—

The statute which empowers the governor in his discretion practically and effectually to abrogate the right to vote of any and every qualified citizen of the State, and at any time, and for all time, and in any and all elections, is repugnant to that portion of the constitution which is expressly ordained to secure to the people the right to elect the officers of their government.

The statute which practically and effectually empowers the governor to determine who of the qualified citizens shall vote and who shall not vote, and who shall elect and who shall not elect the officers of the government, himself included, is repugnant to that portion of the organic frame of the government which was ordained to establish and maintain a republican form of government.

The statute which empowers the governor practically and effectually to divest out of any and every qualified voter his right to vote, not only once, but from time to time and without end, is repugnant to those provisions of the organic law which are ordained to invest the courts with judicial power, and to exclude the executive head of the government from the exercise of such power.

For these reasons the court is constrained to hold that the statute which confers on the governor the power to set aside and annul the registration of a county, in whole or in part, is unconstitutional and void.

In this determination are included the act of March 8, 1867, chapter 36, sections 4 and 5, and that part of the act of February 26, 1867, chapter 52, so far as it authorizes the governor to set aside registration, and undertakes to confirm his acts of this kind done before the passage of the act; and to punish persons who vote or who attempt to vote “by virtue of certificates issued from a registration declared null and void” by the governor.

Again, the contestee admits (see his “Reply to Contestant's Argument,” page 9) that if the supreme court decided that the governor had no power to “set aside” these registrations, that “not only the contestee in this case *is not entitled to a seat*, but perhaps only a few of the sitting members from Tennessee of the present or any preceding Congress since the rebellion are or were entitled to seats.”

That the court so decided does not admit of debate. Now, which does the majority of the committee propose to overrule. the unanimous opinion of the supreme court of the State, thus solemnly pronounced by a bench thus appointed, or the equally deliberate and solemn conviction and admission of the sitting member? Indeed, to sustain the resolutions recommended by the majority is to ignore both the court and the contestee.

From the report of the majority of the committee in thus overruling the decision of the supreme court of Tennessee, and the confession of judgment thereupon by contestee, the undersigned, for the reasons here-



inbefore given, makes his appeal to the Representatives of the nation, and submits for their determination the following resolutions:

*Resolved*, That C. A. Sheafe was duly elected, and is entitled to his seat in the Forty-first Congress as the Representative of the fourth congressional district of the State of Tennessee.

*Resolved*, That Lewis Tillman was not elected, and is not entitled to a seat in the Forty-first Congress as the Representative of the fourth congressional district of the State of Tennessee.

P. M. DOX.

EXHIBIT A.

SECRETARY OF STATE'S OFFICE,  
Nashville, Tennessee, January 12, 1871.

Official vote for member of Congress from the fourth congressional district of Tennessee:

Counties.	John M. Bright.	Jas. Mullins.
Rutherford .....	2,099	610
Cannon .....	833	83
Coffee .....	693	35
Franklin .....	1,392	27
Lincoln .....	2,364	48
Bedford .....	1,449	634
Marshall .....	1,208	163
Giles .....	1,789	243
Total .....	11,827	1,843
	1,843	
Bright's majority .....	9,984	

STATE OF TENNESSEE:

I, Thomas H. Butler, secretary of state of said State, hereby certify that the foregoing is a true statement of the election for member of Congress in the fourth congressional district of said State, at an election held on the 8th day of November, 1870, as the same appears of record in my office.

In testimony whereof I hereunto set my official signature, and, by order of his excellency the governor, affix the great seal of the State of Tennessee, at the executive department in Nashville, on this 12th day of January, 1871.

[GREAT SEAL OF TENNESSEE.]

T. H. BUTLER,  
Secretary of State.

SHIELDS vs. VAN HORN.

The secretary of state rejected the returns of two counties. It was held that his duty under the law was to count all legally returned votes, and award the certificate to the candidate receiving the largest number.

Allegations of fraud were alleged in regard to one county, and held by the sub-committee to be sustained; and they recommended the rejection of the entire vote.

The report was adopted *nem. con.*



July 15, 1870.—Mr. Churchill, from the Committee of Elections, made the following report:

*The Sub-committee of Elections, to whom was referred the petition of James Shields, claiming to be entitled to the seat now occupied by Robert T. Van Horn, as Representative of the sixth congressional district of Missouri, and the evidence in support thereof, and in opposition thereto, having considered the same, submit the following report:*

The sixth congressional district of Missouri is composed of the ten counties of Clinton, Clay, Platte, Jackson, Caldwell, Ray, Lafayette, Carroll, Saline, and Chariton, and the vote of these counties at the election for Representative in the Forty-first Congress, held on the 3d day of November, 1868, was as follows:

Counties.	James Shields.	Robert T. Van Horn.
Clinton .....	659	567
Clay .....	319	236
Platte .....	792	537
Jackson .....	3,027	1,432
Caldwell .....	398	825
Ray .....	559	740
Lafayette .....	559	696
Carroll .....	832	947
Saline .....	395	588
Chariton .....	839	778
	8,379	7,396

That this is a correct statement of the vote cast at that election is not questioned by either party, and it shows a majority for the contestant over the sitting member of 983 votes. The secretary of state, to whom, by the law of Missouri, the returns of votes cast for the several candidates for Representative in Congress in each county are made by the clerk of the county court in each county, rejected the returns from the counties of Platte and Jackson, whereby a majority of 867 votes in the eight remaining counties was shown in favor of Robert T. Van Horn, to whom he gave a certificate of election in due form, upon which he was admitted to the seat. The supreme court of Missouri, in two cases arising in different parts of the State at this election of 1868, have decided, in accordance with the general current of authority in this country, both legislative and judicial, that the action of the secretary of state was not authorized by law; that his sole duty was to add together the votes returned to him as cast for each candidate in the several counties, and to give the certificate to the person to whom, upon such addition, it appeared that a majority of votes had been given. (*The People vs. Rodman*, 43 Mo., 256; *The People vs. Steers*, 44 Mo., 224, 228.)

The action of the secretary of state, therefore, does not aid us in deciding this contest upon the merits of the case, and is only referred to to explain the attitude of the different parties to this contest. Although the vote of Platte County was rejected by the secretary of state, and is



attacked by the sitting member in his answer to the contestant's notice of contest, no evidence is given to sustain the allegations of the answer in that respect, and the vote of that county must therefore stand.

The only question remaining in this case is: *Shall the vote of Jackson County be counted?*

The reasons given why it should not be counted are, that such frauds and irregularities occurred in the appointment of the officers of registration, in the making of the registration, and in the conduct of the election, as make both registration and election a nullity.

The committee first desire to call the attention of the House to the provisions of the constitution and laws of Missouri relating to registration and election.

The following are the third, fourth, fifth, and sixth sections of the third article of the constitution of Missouri, of 1865, relating to this subject:

SEC. 3. At any election held by the people under this constitution, or in pursuance of any law in this State, or under any ordinance or by-law of any municipal corporation, no person shall be deemed a qualified voter who has ever been in armed hostility to the United States, or to the lawful authorities thereof, or to the government of this State, or has ever given aid, comfort, countenance, or support to persons engaged in any such hostility; or has ever in any manner adhered to the enemies, foreign or domestic, of the United States, either by contributing to them, or by unlawfully sending within their lines money, goods, letters, or information; or has ever disloyally held communication with such enemies, or has ever advised or aided any person to enter the service of such enemies; or has ever by act or word manifested his adherence to the cause of such enemies, or his desire for their triumph over the arms of the United States, or his sympathy with those engaged in exciting or carrying on rebellion against the United States; or has ever, except under overpowering compulsion, submitted to the authority or been in the service of the so-called "Confederate States of America," or has ever left this State and gone within the lines of the armies of the so-called "Confederate States of America," with the purpose of adhering to said States or armies, or has ever been a member of or connected with any order, society, or organization inimical to the Government of the United States or to the government of this State; or has ever been engaged in guerrilla warfare against loyal inhabitants of the United States, or in that description of marauding commonly known as "bushwhacking," or has ever knowingly and willingly harbored, aided, or countenanced any person so engaged; or has ever come into or has left this State for the purpose of avoiding enrollment for or draft into the military service of the United States, or has ever, with a view to avoid enrollment in the militia of this State, or to escape performance of duty therein, or for any other purpose, enrolled himself, or authorized himself to be enrolled by or before any officer, as disloyal or as a southern sympathizer, or in any other terms indicating his disaffection to the Government of the United States in its contest with rebellion, or his sympathy with those engaged in such rebellion, or having ever voted at any election by the people in this State, or in any other of the United States, or in any of their Territories, or held office in this State, or in any other of the United States, or in any of their Territories, or under the United States, shall thereafter have sought or received under claim of alienage the protection of any foreign government, through any consul or other officer thereof, in order to secure exemption from military duty in the militia of this State or in the Army of the United States; nor shall any such person be capable of holding in this State any office of honor, trust, or profit under its authority, or of being an officer, councilman, director, trustee, or other manager of any corporation, public or private, now existing or hereafter established by its authority, or of acting as a professor or teacher in any educational institution or in any common or other school, or of holding any real estate or other property in trust for the use of any church, religious society, or congregation. But the foregoing provision in relation to acts done against the United States shall not apply to any person not a citizen thereof, who shall have committed such acts while in the service of some foreign country at war with the United States, and who has since such acts been naturalized, or may hereafter be naturalized under the laws of the United States; and the oath of loyalty hereinafter prescribed, when taken by any such person, shall be considered as taken in such sense.

SEC. 4. The general assembly shall immediately provide by law for a complete and uniform registration by election districts of the names of qualified voters in this State; which registration shall be evidence of the qualification of all registered voters to vote at any election thereafter held; but no person shall be excluded from voting at any election on account of not being registered until the general assembly shall have passed



an act of registration, and the same shall have been carried into effect, after which no person shall vote unless his name shall have been registered at least ten days before the day of the election; and the fact of such registration shall be no otherwise shown than by the register, or an authentic copy thereof certified to the judges of election by the registering officer or officers, or other constituted authority. A new registration shall be made within sixty days preceding the tenth day prior to every biennial general election; and after it shall have been made no person shall establish his right to vote by the fact of his name appearing on any previous register.

SEC. 5. Until such a system of registration shall have been established, every person shall, at the time of offering to vote, and before his vote shall be received, take an oath in the terms prescribed in the next succeeding section. After such a system shall have been established, the said oath shall be taken and subscribed by the voter at each time of his registration. Any person declining to take said oath shall not be allowed to vote, or to be registered as a qualified voter. The taking thereof shall not be deemed conclusive evidence of the right of the person to vote, or to be registered as a voter; but such right may, notwithstanding, be disproved. And after a system of registration shall have been established all evidence for and against the right of any person as a qualified voter shall be heard and passed upon by the registering officer or officers, and not by the judges of election. The registering officer or officers shall keep a register of the names of persons rejected as voters, and the same shall be certified to the judges of election; and they shall receive the ballot of any such rejected voter offering to vote, marking the same, and certifying the vote thereby given as rejected; but no such vote shall be received unless the party offering it take, at the time, the oath of loyalty hereinafter prescribed.

SEC. 6. The oath to be taken as aforesaid shall be known as the oath of loyalty, and shall be in the following terms:

I, A. B., do solemnly swear that I am well acquainted with the terms of the third section of the second article of the constitution of the State of Missouri, adopted in the year 1865, and have carefully considered the same; that I have never, directly or indirectly, done any of the acts in said section specified; that I have always been truly and loyally on the side of the United States against all enemies thereof, foreign and domestic; that I will ever bear true faith and allegiance to the United States, and will support the Constitution and laws thereof as the supreme law of the land, any law or ordinance of any State to the contrary notwithstanding; that I will, to the best of my ability, protect and defend the Union of the United States, and not allow the same to be broken up and dissolved, or the Government thereof to be destroyed or overthrown under any circumstances, if in my power to prevent it; that I will support the constitution of the State of Missouri, and that I make this oath without any mental reservation or evasion, and hold it to be binding on me.

The constitutionality of these provisions has been settled by the supreme court of the State and of the United States, and is not questioned in this contest.

In December, 1865, an act was passed establishing a system of registration; under which a registration was made prior to the general biennial election in 1866. In March, 1868, another act for the registration of voters was passed, under which the registration for the election of November 3, 1868, was made. By the latter of these acts, the governor was required, on or before the 23d day of March, 1868, by and with the advice of the senate, to appoint in each senatorial district in the State, except those in the county of St. Louis, a superintendent of registration, whose duty it was in the month of June following to appoint three suitable, competent, and discreet persons in each county in his district as a board of registration, who were to serve until the next appointment of superintendent in the district, except that the superintendent had power, "in his discretion, to remove any person appointed by him for incompetency, or for any other cause." (Laws 1868, p. 131, §§ 1 and 2.) The ninth section of this act prescribed the duties of the registering officers in making the registration, and is as follows:

SEC. 9. The board of registration shall have power to examine, under oath, any person applying for registration, as to his qualifications as a voter, and they shall, before entering the name of any person on the registry of qualified voters, *diligently inquire and ascertain* that he has not done any of the acts specified in the constitution as causes of disqualification; and if, from their own knowledge, or evidence brought before them, they shall be satisfied that any person seeking registration is disqualified under any provision of the constitution, they shall not enter his name on the list of qualified



voters, though he may have taken and subscribed before them the oath of loyalty aforesaid; *but if he has taken and subscribed such oath*, shall enter his name on a separate list of persons rejected as voters, and, in connection with such entry, they shall state the grounds of the rejection, and they shall also note every appeal from their decision, by making an entry of the fact opposite the name of the party taking such appeal. The board of registration, or any member thereof, shall have power to administer oaths to all parties appearing before them for registration or as witnesses.

In the fourteenth senatorial district of Missouri, composed of the counties of Jackson, Cass, and Bates, Thomas Phelan was appointed superintendent of registration. The evidence shows that he was anxious to secure the appointment, and for the reason, as given by himself to an acquaintance whose influence he desired to secure, "that he was low in finances, and that if he got the office he could make it pay." (Mis. Doc. No. 18, p. 33.) As the pay of superintendent was but \$3 a day for the number of days actually employed in carrying out the provisions of the act, it would not seem to be, in itself, an office to be sought for its emoluments.

To the governor, before his appointment, Phelan represented himself as one of the strongest radical republicans—indeed, so extreme a radical, that the governor, for that reason, hesitated to appoint him, and only did so in deference to the opinions of some of the leading radicals of that senatorial district. He stated to the governor that many had voted at the election in Jackson County in 1866 who were not entitled to vote, and detailed various expedients to exclude such persons, and suggested rules which he proposed to lay down to govern the registers he should appoint, which were so stringent that the governor told him that they exceeded what the law required, and that all that was desired was "a fair and honest enforcement of the constitution and the law," (p. 28.) After his appointment as superintendent he appointed three republicans, R. M. Ainsworth, Charles F. Quest, and Henry E. Vantrees, as registering officers for the county of Jackson. To one of these (Quest) he insisted that the object was to disfranchise as many as possible, and proposed that in one township the list of persons registered and objected to should be put up just at dark, and then to have some one tear it down, which Quest refused to have anything to do with, (p. 48,) and told him it would be a penitentiary offense so to do. Phelan, however, said that he would do it. Phelan became a candidate for the republican nomination for sheriff in the county of Jackson, as he had informed the governor he expected to be, (p. 29,) but was not nominated. He then offered, if he could have the nomination of clerk of the Kansas City court of common pleas, that he would overlook his disappointment in not being nominated for sheriff; but, failing in this, he determined, as he told Joshua Thorne, that he would drag down the leaders of the party in Jackson County with him, (p. 44.) In this determination he was further influenced by other and more sordid considerations.

Before the meeting of the nominating conventions he had been told in Independence that if he would change his base of operations, (that is, his political associations,) he could make a handsome thing of it, (p. 36.)

The testimony of C. J. Corwin, (pp. 15-27,) who was the publisher and editor of the leading democratic paper in Kansas City, in Jackson County, prior and up to the election in November, 1868, shows that the buying up or getting control of the superintendent of registration was a subject of deliberation and consultation among the leading democrats in the State, (pp. 25, 26;) that this was particularly true in Jackson County and vicinity; that it was understood that Phelan had got the position to make money out of it, and it was believed that if he failed to get the



republican nomination for sheriff he could be bought up by the democrats, (p. 18;) that a caucus was held on Sunday at the house of M. J. Payne, afterward appointed by Phelan one of the registering officers of the county, at which the subject of buying up Phelan was discussed, the sum necessary for that purpose considered, and the best person to arrange with Phelan agreed upon, who was Charles Dougherty, the democratic candidate for sheriff; that Payne was fixed upon as the man to talk with Dougherty upon the subject, (pp. 18, 19;) that money was subscribed or raised for the purpose, (p. 27,) and that an arrangement was effected with Phelan by which the democrats were to control the registration through him, (pp. 20, 21,) and that this arrangement, as Corwin understood it, was a pecuniary one, (pp. 19, 25, 27.) From this time Phelan acted with the democratic party, (p. 16.)

Two or three days before the registration was to commence Phelan removed Quest as registering officer and appointed Milton J. Payne in his place, and on the day before the registration was to commence Ainsworth and Vantrees were also removed, and Jeremiah Dowd and W. N. O. Monroe, democrats, were appointed in their places. After their appointment he intimated to friends of the sitting member that he could be induced for money to leave the district and so give the governor an opportunity to appoint another superintendent in his place, and so undo what he had done, (pp. 37-44;) but these offers were not accepted.

He swears, himself, to improper suggestions and offers having been made him by or on behalf of the sitting member and his friends, but these were denied by Colonel Van Horn in a card published at the time, and the whole evidence in this case shows Phelan's character in such a light that the committee think no weight should be attached to his evidence.

The committee think the evidence establishes that the appointment of Payne, Dowd, and Monroe, by whom the registration in Jackson County was made, was the result of a corrupt arrangement made by Phelan with Charles Dougherty, the democratic candidate for sheriff in Jackson County, and his political friends, and that one, at least, of the persons so appointed, and who seems to have been one of the most active and influential members of the board of registration of the county, Milton J. Payne, was a party to that corrupt arrangement. The board thus appointed seem to have acted throughout in disregard of the first and most important duty imposed upon them by the law. The language of the law is, "They shall before entering the name of any person on the registry of qualified voters *diligently inquire and ascertain* that he has not done any of the acts specified in the constitution as causes of disqualification." The evidence seems to establish conclusively that all that was required in order that a person's name should be put upon the list of qualified voters was that he should take the oath of loyalty found in the sixth section of the second article of the constitution of Missouri. Peter J. Miserez, (p. 34,) B. F. Neugent, (p. 42,) Joshua Thorne, (p. 45,) Henry Tull, (p. 46,) Elijah Thomas, (p. 47,) Charles F. Quest, (p. 48,) R. W. Dawson, (p. 50,) and Jacob S. Boreman, (p. 54,) who were present at various meetings of the board of registration, all agree in testifying that no inquiries as to the causes of disqualification mentioned in the constitution were made by the board, but that the applicant on taking the oath of loyalty was registered.

The result of this registration was that 5,186 were registered as qualified voters in 1868, while only 2,284 were so registered at the prior



registration in 1860, and only 2,967 at the subsequent registration made in 1869.

Charles F. Quest swears that fifty-six of the persons so registered by this board as qualified voters were disfranchised for cause in 1866 by the board of which he was a member, (p. 49.) He further testifies that Phelan told him that there were not over a dozen legal voters at the most in Fort Osage Township, yet that township was so registered that 183 qualified votes were returned as cast at the election of November 3, 1868, of which 174 were cast for the contestant and only 9 for the sitting member, (pp. 48-60.) A. L. H. Crenshaw, who was one of the judges of the election at Blue Springs in Sui-a-bar Township at the election in November, 1868, testifies (pp. 56, 57) that six persons were registered as qualified voters in that township who were bushwhackers in the late rebellion; that seven others were so registered who were in the southern army, as they themselves had informed him; and that twenty-five others were so registered in the same township who were open sympathizers with the rebellion, and three of whom were known to him to have been in the rebel army.

Jacob S. Boreman testifies that he was present at the meeting of the board of review, and that sixty names attached to the copy of the oath of loyalty, said to have been received by mail, were entered upon the qualified list, without any proof of residence or loyalty, or other matter outside of the oath of loyalty, and not more than a half a dozen of whom were known to any member of the board, as stated by them at the time, (p. 55.)

The laws of Missouri give great and unusual powers to the board of registration. They register, or refuse to register, not only upon evidence produced before them, but also upon their own knowledge, or supposed knowledge, and from their decision the only appeal is to the board of review, composed of the three members of the board of registration, and of one other person, the supervisor of registration for the county. Their decision is final, for the courts are expressly forbidden to issue any mandamus to compel the adding or striking off of the name of any voter contrary to their decision.

The officers of election also have no discretion in the receiving or rejecting of votes. They are governed by the registration, and it is made a penal offense for them to receive the vote of any person not registered, or to reject the vote of any person registered. It is of the first consequence, therefore, that the registration be honest and pure, for without that the purity of the election cannot be maintained, and if the registration be rejected the whole election falls. We think that the evidence in this case establishes: That the removal of the first board appointed by Phelan, and the appointment of their successors, who made the registration, was the result of a corrupt agreement to that effect, made by Phelan with Charles Dougherty and others, and was made in the interest of one of the political parties in the county of Jackson, (pp. 20, 21;) also, that the registrars appointed were parties to that corrupt agreement, or cognizant of it; and, further, that the registration was conducted contrary to law, and with the purpose of carrying that corrupt agreement into effect.

In the case of *Switzler vs. Dyer*, decided by this Congress, the majority of the committee did not believe the fraudulent agreement in that case charged to have been established by the evidence, made, and therefore reported in favor of the contestant. The House, however, reversed the finding of the committee in this report; rejected the vote of Monroe County, which was in question; and gave the seat to the contestee. In



this case the majority of the committee find the corrupt agreement established by the evidence, and upon the authority of the case just quoted, as of many other cases, reject the registration of Jackson County as fraudulent, and with it reject the vote of that county, which was the result of that fraudulent registration.

This conclusion makes it unnecessary for the committee to consider the irregularities shown to have occurred at the election, where persons not on the list of registered voters were allowed to vote upon the certificate of a single member of the board of registration, (pp. 35, 36, 42,) nor the defects in the poll-books returned by the judges of election to the clerk of the county court, (pp. 42, 43, 53.) The rejection of the vote of Jackson County makes the vote of Robert T. Van Horn 5,964, and of James Shields 5,352, and elects the former by a majority of 612. The committee, therefore, recommend the adoption of the following resolutions:

*Resolved*, That James Shields is not entitled to a seat in the House of Representatives in the Forty-first Congress, from the sixth congressional district of Missouri.

*Resolved*, That Robert T. Van Horn is entitled to a seat in the House of Representatives in the Forty-first Congress, from the sixth congressional district of Missouri.

---

#### VIEW OF THE MINORITY.

Mr. BARR, member of the sub-committee, to which was referred the case of Shields *vs.* Van Horn, submits the following views:

The sixth Missouri district is composed of ten counties, to wit: Clinton, Chariton, Clay, Caldwell, Carroll, Jackson, Lafayette, Platte, Ray, and Saline. The petition and notice of Shields, the contestant, and the answer of Van Horn, contestee, taken in connection with the testimony submitted on both sides, disclose the following as the

#### POINTS AT ISSUE.

1. Shields charges that the county clerks of the respective counties of the district, pursuant to a duty imposed by law, transmitted to the secretary of state, who, under the statutes of Missouri, is a canvassing officer, abstracts of the votes cast for member of Congress at the general election held November 3, 1868; that said secretary, whose duty it was to open the abstracts, cast up the votes, and give a certificate of election to the person receiving the highest number of votes, refused or neglected in violation of law, to cast up the votes of Jackson and Platte Counties, and only counted the votes of the remaining eight, which in the aggregate gave Van Horn a majority; whereas, had the secretary complied with the law and included Jackson and Platte in his count of votes, Shields would have had a majority of the legal votes cast, thus entitling him to the certificate. These allegations of law and fact the contestee denies, and in vindication of his right to the seat now occupied by him, charges—

2. That for various reasons specifically named in his answer, there was neither a legal registration nor a legal election in Jackson and Platte Counties. These reasons may be fairly and briefly summed up as follows:



## AS TO PLATTE COUNTY.

That the election in Platte was conducted with violence, intimidation of election officers and voters, seizure of polling places, bribery, illegal voting, and other unlawful means, whereby hundreds of legal voters were kept from the polls, and illegal votes to the number of six hundred or more received; also, that the number of registered voters was not, by several hundred, as large as the number polled. These are serious charges, but as the sitting member has submitted no evidence whatever to sustain them, or any of them, either as to the registration or election, the sub-committee is relieved of any inquiry concerning them; and as the contestant has furnished official proof of the vote cast in that county, (p. 12,) it is considered the imperative duty of the sub-committee to consider the same in arriving at a legal result.

## AS TO JACKSON COUNTY.

Against the validity of the vote of this county the charges of the sitting member are various, and may be thus epitomized: First. That both the registration and election, as well as the appointment of registrars, were in utter disregard of law, and tainted with fraud. Second. That large numbers of men, amounting to many hundreds, notoriously disqualified by reason of treason and rebellion, were allowed to register and vote, while the names of several hundred legal voters who had registered were omitted from the poll-lists and thus deprived of the right to vote. Third. That large numbers of persons not registered were permitted to vote on certificates of persons who had acted as registrars, said officers being *functus officio*; and that a large number were illegally placed by the board of review on the qualified lists, these persons not being present before the board, and without affidavits as required by law. Fourth. That the ballot-boxes and poll-lists in many precincts were taken away from the polling places and kept away all night, the officers of the election having dispersed before counting, thus affording every opportunity for tampering therewith; and that the ballots in some precincts were not taken from the box and counted as required by law, but were scattered about in piles and counted by piles, in some cases more than one hundred votes being marked on the tally-list by simply reading one ballot. Fifth. That large numbers of persons disqualified by reason of non-residence, were permitted to register and vote. Sixth. That M. J. Payne, one of the registrars, being United States deputy collector by virtue of an appointment from the collector of the district, (for this is the proof,) was incompetent to hold the office of registrar. Seventh. That in no one precinct was the law complied with in the qualification of officers of election, in counting the votes and making return, the whole being illegal and contrary to law, without validity in any respect whatever. Eighth. That Thomas Phelan, superintendent of registration, corruptly removed three registrars favorable to the execution of the law, and appointed a board, a majority of whom were notorious enemies of the law, thus placing it out of the power of the legal voters of the country to protect the ballot-box, and handing them over in the greater portion of the county to the power of a violent and disloyal population. Ninth and last. That more than two thousand illegal votes were cast in Jackson County for Shields, contestant.

It will be seen from this summary, and from the evidence and printed arguments submitted by the parties, that whatever the preliminary



pleadings may be, as found in the notice and answer, there is no controversy as to the vote of the following nine counties of the district:

Counties.	James Shields.	Robert T. Van Horn.
Clinton .....	659	657
Clay .....	319	286
Platte .....	792	537
Caldwell .....	398	825
Ray .....	559	740
La Fayette .....	559	696
Carroll .....	832	947
Saline .....	395	588
Chariton .....	839	778
Total .....	5,352	3,964

Making Van Horn's majority, Jackson excluded, 612; while if Jackson be counted, as contestant insists that it should be, (for a vote of Jackson see page 12,) the vote would stand:

For Shields .....	8,379
For Van Horn .....	7,396
Making Shields's majority .....	983

Therefore the whole controversy is narrowed to the consideration of the law, and the question whether under the law the vote of Jackson should be counted or excluded. Underlying the investigations of the sub-committee are some important

#### QUESTIONS OF LAW,

which, being settled, should guide its action, enable the House to correctly apply the testimony, and arrive at a correct result in the case.

The first question under the law relates to the

#### POWER AND DUTY OF THE SECRETARY OF STATE.

It cannot be seriously questioned that the action of the secretary of state in this case is not only wholly indefensible, but is such usurpation of power as strikes directly at freedom of elections and the principles of representative government. The charge that he refused to open and cast up the returns from the counties of Platte and Jackson, which were duly certified to him by the county clerks, is conclusively proven by testimony nowhere denied. The law of Missouri delegating his powers and defining his duties as a canvassing officer can admit of but one construction.

The text is as follows:

SEC. 32: Within fifty days after such general election, and as much sooner as the returns shall have been made, the secretary of state, in the presence of the governor, shall proceed to open the returns and to cast up the votes given for all candidates for



any office, and shall give to the persons having the highest number of votes for members of Congress from each district certificates of election under his hand, with the seal of the State affixed thereto. (Rev. Stat. Mo., 1865, p. 64.)

Committees of Congress and of the several State legislatures, and the courts, have decided that a canvassing officer has no power to go behind the election returns duly certified to him by the proper officers, nor behind the registration. That he acts simply in a ministerial, and not judicial, capacity, is affirmed by the entire current of authority. The sub-committee know of no legislative or judicial decision to the contrary. This point seems too clear for argument, and too plain to require the citation of authorities; but we refer to a recent decision upon this very point by the supreme court of Missouri, and concurred in by all the judges of the court. (January term, 1869.) An official copy of the opinion is made a part of the record in this case. (Page 13.) From that opinion we gather the correct conclusion, as follows:

The law does not seem to have vested in the secretary any discretion in the premises. It requires him to perform the act of opening and counting the returns. It is the law declared by this court, as well as the general current of authority, that a county clerk or the secretary of state, in opening and casting up votes, acts ministerially and not judicially. The matter of determining upon the legality of votes is a judicial function, to be passed upon before a tribunal competent to make an adjudication where the parties interested can be heard.

This being the law as declared by the highest judicial authority in the State, the conclusion is irresistible that the Missouri secretary of state in going behind the election and registration in Platte and Jackson Counties usurped and exercised a very dangerous power, assumed judicial functions without authority of law, and violated the constitution of his State. Just as conclusively, therefore, it follows that the sitting member occupies a seat in the House of Representatives as the result of such usurpation by the secretary of state; that the certificate upon which he was sworn in as a member was issued to him wrongfully, not only without warrant of law but in express derogation of law. It being in proof, and in point of fact not denied by the contestee, that Shields received a majority of votes cast at the election and duly certified to the secretary of state, the commission, of right and in law, belongs to him. In contemplation of law, and by virtue of the vote cast, Shields is in Congress and Van Horn out, thus reversing the legal status of the parties to this contest, and changing the burden of proof from the contestant Shields to the contestee Van Horn. The consequences of this position of parties are important and bear on the whole question of testimony, its application to and value in the case. The contestee says, "Congress possesses original and exclusive jurisdiction in extending the right of parties to seats in Congress." Without questioning this rule, it may be remarked that it is in entire harmony with the foregoing suggestions as to the *status* of the parties; and that it is plainly at war with the usurpations of the secretary of state as a canvassing officer, in assuming a jurisdiction belonging "exclusively" to Congress. With just as much support in law might the secretary assume *all* the powers of Congress, and pass upon the qualifications of members, as to assume to judge of their election and returns.

The legal consequence therefore is, that in order rightfully to hold the seat he now occupies in the House by usurpation of the secretary of state, and which seat *prima facie* belongs to the contestant, the burden of proof is upon the sitting member to show that a majority of the qualified votes cast at the election in the whole district, Platte and Jackson included, were cast for him; and not, as returned by the several clerks, for Shields, the contestant. And this brings us to consider



## THE REGISTRATION AND ELECTION LAWS OF MISSOURI.

By and with the advice and consent of the State senate, the governor appoints a superintendent of registration for each senatorial district; this officer appoints three registrars of voters for each county, called, in law, a "board of registration;" and these, in conjunction with a supervisor of registration, who is elected by the people of each county, constitute a "board of review."

The board of registration, after due notice given, visits each election district to register the voters. After the completion of this primary township registration, the registrars, presided over by the county supervisor, hold sessions at the county seats as a "board of review," to review, correct, complete, and certify the registration of their respective counties.

Each person applying to be registered as a voter must first take and subscribe the "oath of loyalty," a test oath prescribed by the constitution of the State. The board is also authorized to examine, under oath, every applicant for registration and diligently inquire and ascertain that such person has not been guilty of any one of a very numerous class of disqualifying acts specified in the constitution and the oath. They may also summon witnesses, or hear those who may voluntarily come before them, to testify as to the qualifications or disqualifications of applicants, and may also act on their own knowledge as to either.

Those who are "accepted" are registered as qualified or legal voters, and the ballots of such, and such only, are counted by the judges to decide an election. Those who are "rejected" are registered as rejected or illegal voters, and may vote, but their votes do not enter into the count in deciding who are elected and who defeated.

## THE EVIDENCE—JACKSON COUNTY.

The evidence of both parties is confined to the registration and election in Jackson County, and for the purpose of simplicity may be divided under several heads. And first, as to the

## EX-PARTE AFFIDAVITS

furnished to the secretary of state by the sitting member, and upon which that officer refused to open and cast up the returns from Jackson County. Upon this point it is insisted that we have nothing to do with "the amount, competency, relevancy, or genuineness of the evidence" upon which the secretary of state usurped judicial functions, threw out the vote of an entire county, and, in violation of law, gave a certificate of election to the person receiving the minority of votes. To this proposition we cannot assent. Were this accepted as the rule the Committee of Elections of this House would be estopped from inquiring into the evidence of any fraud, or even forgery, by which party ends are served and whole constituencies disfranchised.

It is in proof (pp. 5 and 8) that the following affidavit was forwarded to the secretary of state, and in part influenced him to throw out the vote of Jackson and give the certificate of election to the sitting member. The affidavit purports to have been made by William A. Bevis, on the 11th December, 1868, before A. Waschman, notary public:

STATE OF MISSOURI, *County of Jackson, ss* :

On this day personally appeared before the undersigned, notary public, William A. Bevis, supervisor of registration for the county of Jackson, State of Missouri, who, being duly sworn, on his oath states that, as supervisor of registration of said county, he



attended all the sessions of the board of registration of said county, sitting for the purpose of registering persons entitled to vote at the last general election in the State of Missouri, and that persons desiring to vote or register were only required to take the oath of loyalty, in order to test their right to register or vote, and further were not required on oath, or otherwise, to answer questions propounded to them by the board of registration.

W. A. BEVIS.

Three witnesses were introduced by the contestant to this affidavit, and examined by him and the attorney of the sitting member, to wit, A. H. Hollowell, W. A. Bevis, and A. Waschman, and their testimony can be found on pages 5, 6, 8, and 9 of the printed testimony.

Their disclosures are extraordinary, and are well calculated to startle the House. Hollowell was a friend of Van Horn; went to Jefferson City and asked Rodman, secretary of state, "not to issue a certificate to Shields," as "we would produce him such testimony as would warrant him in rejecting the vote of Jackson County;" had several interviews with him afterward in Jefferson City and St. Louis. He (Hollowell) wrote out the affidavit of Bevis, gave it to one Moore, of Westport, the residence of Bevis, and asked him to have Bevis swear to it, and bring it to him in Kansas City, where Hollowell resided. In a couple of days afterward Moore brought it to him; he "gave it to Colonel Van Horn, and he took it to Jefferson City to Mr. Rodman." He procured Bevis's affidavit at the request of Colonel Van Horn; did not remember ever to have previously seen Bevis's signature, and did not know whether Colonel Van Horn was acquainted with it. Bevis swears in answer to questions:

Q. Have you seen an affidavit purporting to have been made by you on the 11th day of December, 1868, before A. Waschman, notary public, and in the words following, to wit? (Here follows the affidavit).—A. I have seen this affidavit.

Q. State what you know about said affidavit.—A. It is a forgery and without a word of truth. I never knew anything of it until I saw it published; saw it first in the Kansas City Times, and then in the report of the committee on elections in cases of the counties of Dunklin, Jackson, &c.

Albert Waschman swears:

Q. Have you seen what purports to be an affidavit made before you as a notary public on the 11th day of December, A. D. 1868, by William A. Bevis, supervisor of registration of Jackson County, and published on page 11 of the report of the committee on elections of the Missouri house of representatives, in the cases of the counties of Dunklin, Jackson, &c.?—A. I have seen it.

Q. What do you know about that affidavit, if anything?—A. It is, I am confident, a forgery.

Q. Did William A. Bevis ever make an affidavit before you of any kind?—A. No, he never did.

Q. Was there any one who had access to your notarial seal?—A. Yes; one R. F. More in particular. He was town attorney for the town of Westport, and I was clerk. He very frequently wrote on my desk.

Cross-examination by attorney for R. T. Van Horn:

Q. To what political party did said R. F. More belong?—A. He was a very strong democrat.

So much for the evidence which appears in this record, on which the secretary of state "ignored" the vote of Jackson County, defeated Shields and elected Van Horn.

The undersigned deems it due himself, as well as Colonel Van Horn, to disavow any intention to connect him with this forged affidavit or the surreptitious use of the notarial seal of Waschman, for in his "brief" the contestee states that—

All the connection I had with the matter was to forward to the secretary of state the paper purporting to be signed by Bevis, together with the testimony of a dozen others to the same effect.



## THE REGISTRATION—JACKSON.

This is assailed on many grounds by the contestee, but it is not necessary to examine them in detail, for even if true they are not decisive of the election, or, in other terms, if conceded, they would not warrant this House in declaring the registration and election illegal and void in Jackson County. In regard to the registration it may be remarked, first: That the removal of the first registrars by Phelan, superintendent, and the appointment of others, was a power which he could exercise at his discretion under the law, and for any reason deemed by him sufficient, especially for the reason he assigned, (page 9,) as follows substantially: That prior to the registration and before the removal of the registrars first appointed, all of whom were particular friends of Van Horn, he had an interview with Van Horn, in which he—

Told me that the radical party was going to employ a clerk during the political campaign in said county of Jackson; that said clerk's first duty would be to make out a list of the number of voters in each township in the county; then to find out the number of radicals and the number of democrats, and furnish a list of the same to the board of registers; and in townships having a democratic majority that I must instruct the board of registers to strike from the list of voters enough of democratic votes so as to give a large radical majority in each township; that by these means the radicals would carry the county, and that there must be from nine hundred to twelve hundred democrats disfranchised, so as to secure a victory for the radical party.

Q. State what your reasons were in making the change.—A. Seeing that the leaders of the radical party in said county of Jackson were trying to force me to act illegally, corruptly, and in violation of law, I removed the registrars above mentioned. I knew that the majority of them were fully under the influence of Colonel R. T. Van Horn and pledged to carry out his programme; all of which I learned in the caucuses of the radical party, at several of which I was present.

For these reasons Phelan, who was also a republican, removed Ainsworth and Vantrees, republicans, and appointed Dowd and Monroe, democrats.

Second. It appears in evidence that these last two appointees were very competent, reputable citizens, whose fidelity to the Government is nowhere questioned or denied.

Third. All those who registered on the list of qualified voters were required to take the test oath of the constitution and laws of Missouri, or, in the language of Payne, one of the registrars—

Those who took the oath of loyalty, and were otherwise qualified as voters, were registered among the accepted voters. Those persons who declined taking the oath were placed on the list of rejected voters. In many instances, persons applying for registration notified the officers of registration that they were not acquainted with the purport of the oath of loyalty, and desired to have it read to them. In such cases the constitutional disqualifications of voters were carefully read. Persons so registered as qualified voters were informed on the opening of the board that under the law objections could be made to their registration as qualified voters, which objections would be heard by the board of appeals and review, to be held subsequently, and that all persons who had committed any of the acts disqualifying them as voters would be finally rejected on notice being previously served on them, and the proof as is required by law.

Q. Did the board at any time, to your knowledge, neglect or refuse to note objections made to the parties registering?—A. They did not.

Q. Where objections were made to parties who had taken the oath of loyalty, did the board neglect or refuse to ask additional questions as to that person's qualifications as a voter?—A. No objections were made that were not noted by the board, and upon proof of the commission of an act disqualifying a person as a voter, the name was stricken from the list of qualified voters, and put upon the rejected list by the board of review. The registration was publicly made, and very few objections were made to voters by persons present. The board registered no persons as voters whom they had reason to believe had committed any of the acts disqualifying them. The board endeavored diligently to ascertain who were entitled to register as qualified voters, and registered only those as qualified voters whom they believed to be entitled to be so registered.



Fourth. If persons not qualified to register and vote applied in such numbers as charged by contestee, it was the duty of himself and friends to make objections and proof. Under the law they had this right. Under the registration laws these objection would have been noted and heard. The registration was publicly made; but it does not appear that either the contestee or his friends made any objection to the registration when it was being made, although he now charges so freely that "hundreds of men notoriously disqualified by treason and rebellion were allowed to register and vote."

#### THE REGISTRY PRIMA FACIE LEGAL.

It is not shown that a single person was allowed to register who did not take and subscribe the oath of loyalty. On the contrary, it is shown by Payne and others that all who were accepted as voters took all the oaths required by law, and were registered by the officers appointed for that purpose. On this point the authorities are uniform, and have again and again been affirmed by the reports of election committees of this House, and by the House itself, to the effect that all the presumptions of law are that registration officers act properly; that none but qualified voters were registered by them; and that every voter admitted by proper officers to the registry and ballot shall be regarded as legally qualified unless the contrary be shown by testimony.\*

#### JACKSON COUNTY OFFICERS COMMISSIONED.

Legal proof is made (p. 14, Exhibit F) of the fact that the governor of the State, Thomas C. Fletcher, a political friend of contestee, and who was made a witness by him, (p. 27,) recognized the legality of the registration and vote in Platte and Jackson Counties by commissioning the county officers of both, from sheriff to coroner, elected on the democratic ticket at the same election and by the same vote. If legal for sheriff, school superintendent, county judge, &c., why not for member of Congress? The contestant has entirely failed to overthrow this legal presumption by proof. There was no such misconduct on the part of registration or election officers as to render either the registration or election void; and if disqualified persons were permitted to register and vote the fact could easily have been shown. Each name is preserved, both on the registry and voting lists, and his ballot numbered. It was therefore entirely within the power of the sitting member to specify each suspected voter by name, and establish his disqualification by proof, showing also for whom he voted. This he failed to do, or even to attempt, except as to: 1. Persons who, although not personally present before the board, were permitted to register on filing the oath of loyalty. 2. Persons who were allowed to vote upon certificates by Dowd, one of the registrars, that they had registered according to law, but that their names had been inadvertently omitted from the list by the copying clerk. 3. Persons who were in the rebel army; and, 4. Persons who were rejected in 1866 and registered in 1868.

Of these in their order:

1. Payne, one of the registrars, testifies as witness for sitting member, (p. 32,) that, on the last day of the board of review, from forty to sixty

\* *Bassett vs. Baily*, 1813, vol. 1, "Contested Elections in Congress," p. 255; *Porterfield vs. McCoy*, 1815, p. 267; also, p. 270; *Easton vs. Scott*, 1816, p. 272; *New Jersey case*, vol. 2, p. 25; *Goggin vs. Gilmer*, 1844, p. 70; *Botts vs. Jones*, 1844, p. 73; *Littell vs. Robbins*, 1850, p. 138.



persons were registered who were not present upon filing the oath of loyalty, signed by each and properly certified by the officers before whom taken; that these names were mostly presented by Jacob Boreman and Charles Vincent, (p. 33.) Boreman was at the time a radical candidate for the legislature, (p. 39,) and afterward one of the attorneys for contestee. Vincent was a candidate on the radical ticket for clerk of the court of common pleas, (pp. 34, 47.) Boreman himself testifies (p. 55) that he presented quite a number of these affidavits, and had the parties registered.

## 2. PERSONS WHO VOTED ON THE CERTIFICATES OF DOWD.

Todd (p. 35) saw five or six of these vote at the court-house in Kansas City, eighth district. Hood (p. 35) saw ten or a dozen at Chalfant, tenth district, and four or five at the ninth district. English (p. 39) was one of the judges of election in the ninth district, and says "there were a number of persons who claimed to be voters whose names were not on the lists furnished the judges by the officers of registration. They claimed their names ought to have been on the lists—went to Mr. Dowd, got certificates, and voted." He objected, and was overruled by the other judges. He adds: "I have no doubt a majority of those who thus voted were legal voters." Neugent (p. 42) saw Dowd issue several certificates; did not know their number, or the names of the voters. Warner (p. 54) saw two or three vote on certificates from Dowd; he (Warner) wrote the certificates for Dowd to sign, and believes they were "for voters of both parties, and nearly equally divided." All this matter is fully explained by Payne, one of the registrars, (p. 7:)

Q. How did it happen that the names of some persons, appearing upon the books of the registrars as qualified voters of Kaw Township, did not appear upon the lists furnished the judges of the election districts of said townships?—A. After the board of review had completed their lists of registration, it became their duty to make a copy of the respective lists, which were to be furnished to the judges of the proper election districts. The names of such as did not appear upon the lists furnished the judges was solely the result of carelessness on the part of the copying clerk employed by the board, and not by any design on the part of the board to leave them off. From my acquaintance with the majority of the voters whose names were left off, I should say the majority of them were democrats. The omission of these names was not known to the members of the board until election day, and we had not time to compare the copy with the other lists.

## 3. IN THE REBEL ARMY DURING THE WAR.

The sitting member sought, by the testimony of A. L. H. Crenshaw, (p. 56,) to establish, by name and specific acts of disqualification, the illegal registry of quite a number of citizens. His witness, however, after, in general terms, disqualifying some forty, when cross-examined, knew of but three out of the whole number (naming them) who had been in the rebel army; "that's all," in his language; "the balance were sympathizers; some of them were down with Price's army; don't know what they were doing; didn't any of them tell me they were sympathizers, but I judged so from their talk."

4. Charles F. Quest, a registrar of voters in 1866, and John R. Swearingen, postmaster at Independence, are introduced by the sitting member (pp. 48 and 51) to show that certain persons named, and numbering in the aggregate about one hundred and twenty, in eight townships of Jackson County, and who were placed on the rejected list in 1866, were on the accepted list in 1868. No copy of the rejected list of 1866 is presented to verify the statement, or corroborate the memory of these two



witnesses. It is certainly a novel doctrine that because certain citizens were rejected in 1866 they ought to have been rejected in 1868. Their rejection in one instance and acceptance in the other were acts of sworn officers, appointed according to law. If the first registration proved the last to have been illegal, why not their acceptance in 1868 prove their rejection in 1866 to have been without warrant of law? But our business is not with the registration of 1866.

But it is not necessary to decide the legal questions involved, nor the competency or incompetency of the proof made. Grant all that is claimed by the contestee, and deduct from Shields's poll the entire number of the four classes enumerated, and still the result is not changed. Allowing the 60 of class one, the 10 or 12 of class two, the 3 of class three, and the 120 of class four to have registered and voted illegally, leaves Shields still with a decided majority. And it may be remarked that if such votes be held illegal no foundation is laid for throwing out the total vote and disfranchising the county. Let it be here remembered that although the evidence is preserved in the county clerk's office of Jackson County, the sitting member does not try to show by proof that any one of either class voted at the election, except the few who presented in Kaw Township the Dowd certificates, and the proof is these were about equally divided between the two parties. Although all the ballots were preserved and were accessible to him by law, certainly the sitting member has furnished no proof that a single one of the classes named voted for contestant. To deduct these votes is to assume, first, that they were illegal, although returned by sworn officers; second, that they all voted, which is not proved; and third, that they all voted for Shields, which would be only an assumption. But allowing all these as having voted for Shields, throw them out, and we reach this result:

Total vote for Shields.....	8,379
Total vote for Van Horn.....	7,396
<hr/>	
Shields's majority on record.....	983
Deduct class No. 1.....	60
Deduct class No. 2.....	12
Deduct class No. 3.....	3
Deduct class No. 4.....	120
<hr/>	
Total deduction.....	195
<hr/>	
Leaving Shields's majority.....	788
<hr/>	

But the sitting member, in his brief, charges that the election officers were not sworn, and that at the time of returning the poll-books to the county clerk there was nothing on said books to show the administration of any oath to the officers conducting the election. On this point E. R. Hickman, county clerk, deposes (p. 42) that on some of the poll-books the judges failed to sign the oath of loyalty, and in some instances the justice before whom the oath was taken omitted to make his certificate to the fact; that after the board of canvassers had cast up the vote the changes were made—that is, the omissions were supplied by the judges and justices of the peace themselves. (P. 43.) So far as witness inquired, the oath was taken by all the judges, although the certificates may not have been completed; does not know of his own knowledge anything more than the parties told him. We cannot agree to the doctrine that the election should be declared void for the omission and



irregularity above charged. The supreme court of Missouri, acting in the line of precedents made and uniformly followed by other courts, held in the case of *The State ex. inf. Attorney General vs. John H. Steers*, respondent:

Although the vote (of Jasper precinct, Ralls County) might have been informally certified, that would make no difference; the officers should look at substance, and not at form. A literal compliance with the prescribed forms is not required in any case, if the spirit of the law is not violated; and the governing principle in all cases is to closely ascertain the intention of the voters.

By the court of appeals of New York, in the case of *The People vs. Cook*, (4 Selden, 67.) In this case the court say:

The neglect of the officers of the election to take any oath would not have vitiated the election.

By the supreme court of Minnesota, in the recent case of *Taylor vs. Taylor et al.*, (10 Minnesota, 107.) One ground of contest in this case was that "in certain towns at said election the judges and clerks of said election did not take the prescribed oath, or any oath." The court say:

If the votes of the citizens are freely and fairly deposited, at the time and place designated by law, the intent and design of the election are accomplished. It is the will of the electors thus expressed that gives the right to the office, and the failure of the officers to perform a mere ministerial duty in relation to the election cannot invalidate it if the electors had actual notice, and there was no fraud, mistake, or surprise.

Again the court say:

If the officers of election fail to perform their duty the law provides a penalty; but the election is not necessarily rendered void.

By the supreme court of California, in the case of *Whipple vs. McKune*, (10 Cal., 352.) In this case the election of McKune to the office of district judge was contested upon the ground that "the officers conducting the election in a given district were not sworn, as the election laws require." No fraud being shown, the election was held valid, notwithstanding such failure of the officers to be sworn.

In the case before the committee it will be remembered the officers were sworn, but some of the poll-books, by an omission untainted by fraud, and not referable to bad intent or unfairness of any kind, did not, at the time of counting the vote, show the fact. It was afterward supplied.

In cases of public officers, who are such *de facto*, acting under color of legal authority, the rule is well settled that their acts as such officers are to be held valid as respects third parties who may have an interest in such acts; and more especially are they valid as to innocent parties who trust them in good faith. And this rule is true, even though such officers hold by an election or appointment not strictly legal. (2 Kent, 295; Bouvier—title "*De Facto*.")

#### CHARGES AGAINST SUPERINTENDENT PHELAN.

The sitting member has taken much testimony to show that Phelan, the superintendent of registration, "entered into a corrupt bargain and sale" with the friends of the contestant in Jackson in regard to registration in that county, whereby, it is charged, the registrars were changed and a large number of illegal voters registered. To establish this charge the sitting member relies upon the testimony only of C. J. Corwin, (p. 15,) who was a democratic editor in Kansas City during the election, and of M. L. Sullivan, (p. 36,) clerk of the executive committee of the republican party of Jackson County.

Corwin was not cross-examined, and his testimony, which covers several pages, is a strange medley, consisting in good part of contradic-



tions, vague impressions, and hearsay. It does not establish the charge that Phelan, for a corrupt consideration, "sold out" (in the language of contestee's brief) to the friends of Shields; nor that he, for a bribe, corruptly removed the first set of registrars and appointed the second; nor does that or any other testimony attack the honesty or impute fraud of any sort to the second set of officers so appointed. As to them, no charge of corruption, fraud, bribery, intrigue, or even disloyalty is made, and they—not Phelan—registered Jackson County.

But, inasmuch as the charge of bribery and corruption is brought into this case, let us look to the proof showing that the friends of the sitting member are not all in position to urge that point here.

1. The Bevis affidavit, which is admitted by the contestee himself to be a forgery, backed by the fraudulent use of the notarial seal of Waschman.

2. The testimony of Phelan, (p. 9,) wherein he swears that Colonel Van Horn told him the radical party would employ a clerk to make a political census of the county, classifying radicals and democrats by name; that this would be furnished the registrars; and that Phelan must instruct them to strike off enough democrats to secure a large radical majority.

3. Phelan also swears (p. 9) that—

On the 27th day of August, 1868, I was waited upon at Independence, Missouri, by Mr. Sullivan, of Kansas City, who was the clerk employed by the radical party. Sullivan told me that he had been sent to me by Colonel Van Horn and others to see about the removal I had made of the registrars; that the devil was to pay, but that he—putting his hand on his pocket—had what would fix the matter all right, and said if I would absent myself from the county so that the secretary of state could be telegraphed to that I had left the district, and have the governor appoint a superintendent in my place, I should have five thousand dollars in cash, saying that L. C. Slavens, esq., of Kansas City, was then at Colonel St. John's office at Independence, and had the money for me in his possession; all of which I refused to do. On the day following, I was again waited upon by Mr. Sullivan, who said he had been sent again by the same parties to ascertain if ten thousand dollars would induce me to resign my position; that if it would, I could have it; and in addition, he was authorized to say, by a gentleman in high position, that I should be appointed to an Indian agency, or a revenue appointment, if Colonel Van Horn was elected.

Q. Did you ever make any publication in the newspapers of Kansas City in regard to these conversations?—A. I did.

Q. Did Mr. Sullivan publish any statement in reply?—A. Yes.

Q. Before Sullivan published his statement, did he have any conversation in reference to what he was about to do; and if so, what was it?—A. He told me the evening before he made the denial of his statements that he was going to deny my statement through the press, and not to think hard of him, although he knew my statements were true. He said Colonel Van Horn had promised to get him a Government situation if he would publicly deny them, the statements I had made.

4. Phelan also swears to a conversation with Dr. Joshua Thorne, two days after the one with Sullivan, and states that—

Thorne said he had been sent by the same parties to have an interview with me, meaning the parties that sent Sullivan, saying, in substance, the registration matter must be fixed up. Just fix upon your figures, and the money shall be forthcoming the moment you resign; and in addition, your name shall be placed upon the radical ticket for sheriff, in place of the man who has been nominated; all of which attempts to bribe and corrupt me I rejected, being determined to see the law faithfully executed; which was done, as I believe, in every instance.

Phelan was cross-examined by Van Horn's attorney and reaffirmed the above points, and added, in answer to interrogatories, as follows:

Q. When was the publication made in the papers you spoke of?—A. Can't say positively; think about the 10th of September.

Q. About how many days after that was it that Sullivan made his denial in the newspaper?—A. I think he made it in a day or two following.

Q. Did Mr. Slavens make any public answer in regard to your statement?—A. He did. He, Sullivan, and Van Horn denied the statements, as I knew they would do. Sullivan told me they would deny them.



Q. Was it before or after the publication of these statements that Thorne had the conversation with you?—A. I think it was on the same day, or on the day following; I am not certain.

5. John Cox, a brother-in-law of Phelan, swears (p. 11) that he had a conversation with Sullivan, in which "he said he had been down to Independence to see Phelan, and had offered him \$5,000, and that he could get ten, if he would remove the registrars or resign;" meaning the second set of registrars, Dowd and Monroe.

Sullivan and Thorne, warm political friends of the sitting member, both testify (pp. 36, 43) that they had several conversations with Phelan about the registration, removal of registrars, success of the radical party, &c. but deny the material statements in Phelan's testimony. So much as to the controversy on points purely personal, as to witnesses, which is here reviewed, that each may have the benefit of having his position fully stated. The undersigned again refers to the rule affirming the validity of the official acts of the members of the board, from whatever motive appointed, especially as no assault is made upon them either as a board or as individual citizens. Phelan had the legal right to appoint and remove registrars on his own responsibility. He was himself appointed by legal authority, and by like sanction of law appointed his subordinates, and there is no greater legal objection to his appointment of Dowd and Monroe than there is to his own nomination as superintendent by Governor Fletcher; and as it is not pretended that the board so appointed was influenced by any other than a conscientious sense of duty, the registration made by them is sanctioned by law, and the election held under such registration is valid. Making the liberal deductions heretofore enumerated from the vote of Shields, his majority, to the benefit of which he is legally entitled, is, as before stated, 798. Wherefore the undersigned submits the accompanying resolution:

*Resolved*, That James Shields, the contestant, was legally elected a member of the Forty-first Congress, from the sixth district of Missouri, and is entitled to the seat as representative of said sixth district.

---

### JOHN B. RODGERS.

This case was not reached.

April 7, 1869.—Mr. Heaton, from the Committee of Elections, made the following report:

*The Committee of Elections, to whom was referred the certificate of John B. Rodgers as a Representative from the State of Tennessee in the Forty-first Congress, submit the following report:*

The Constitution, article 1, section 2, provides that "representatives \* \* \* shall be apportioned among the several States which may be included within the Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons \* \* \* three-fifths of all other persons." A decennial census is provided for, and the number of representatives limited "not to exceed one for every 30,000, but each State should have at least one." Beyond this the apportionment of representation among the several States devolves upon Congress to regulate by legislation.



## ACTION OF CONGRESS—PRECEDENTS.

Until a census could be taken and an apportionment made accordingly, the number of Representatives in the House was fixed at 65. By the first general apportionment act, April 14, 1792, chapter 23, the number was increased to 105, and the ratio of 33,000 adopted. The second, January 14, 1802, chapter 1, retained the ratio of 33,000, and increased the number still further to 141. The third, December 21, 1811, chapter 9, fixed the ratio at 35,000, and the number of Representatives at 181. The fourth, March 7, 1822, chapter 10, increased the ratio to 40,000, and the number of Representatives to 212. The fifth, May 22, 1832, chapter 91, advanced the ratio to 47,700, and the number of Representatives to 240. The sixth, June 25, 1842, chapter 47, established the ratio at 70,680, and incorporated the novel principle of one additional Representative for each State having a fraction greater than one moiety of the said ratio. This reduced the number of Representatives to 223. Each of these acts followed the taking of the census and was based upon the results, and, though in terms of unlimited duration, was manifestly intended to continue in force but for ten years, until after the next succeeding census.

The difficulty of this legislation had been found so great that it produced the act of May 23, 1850, chapter 11, for the taking of the seventh census. This act fixed the number of Representatives at 233, to be apportioned among the several States by the Secretary of the Interior, according to their respective populations as ascertained by the census, and was obviously designed to be permanent. Sections 25 and 26 of the act prescribe the method of apportionment, and after the taking of the seventh census in 1850 the Representatives were so apportioned. These, it is believed, are all the general laws upon this subject, extending in their operation to all parts of the country, and ascertaining the numerical character of the House.

From time to time special acts have been passed to meet the exigencies of particular cases, at the discretion of Congress. The act of February 25, 1791, chapter 9, gave two Representatives each to Kentucky and Vermont, until there should be "an actual enumeration of the inhabitants of the United States." By the act of June 1, 1796, chapter 47, Tennessee was admitted to the Union, with one Representative "until the next general census." The act of April 30, 1802, chapter 40, enabled Ohio to form a State and gives her one Representative "until the next general census." The act of April 8, 1812, chapter 50, admitting Louisiana, gives her one Representative "until the next general census." The act of April 19, 1816, chapter 57, enables Indiana to form a State government, and until the next general census entitles her to one Representative. She was admitted to the Union by joint resolution December 11, 1816. A similar act was passed for Mississippi, March 1, 1817, chapter 33, and a similar joint resolution December 10, 1817; also for Illinois, April 18, 1818, chapter 67, and December 3, 1818; and for Alabama, March 2, 1819, chapter 47, and December 14, 1819.

The act of April 7, 1820, chapter 39, reduced the number of Representatives in the 17th Congress from the State of Massachusetts to 13, and gave the remaining seven to the recently formed State of Maine.

The general apportionment act of March 7, 1822, gave to Alabama two Representatives. The following year a special act, January 14, 1823, chapter 2, gave her an additional member upon fuller information as to the number of her inhabitants. The act of March 6, 1820, chapter 22, enables Missouri to form a State government with one Representative



until the "next general census." She was admitted to the Union by joint resolution, March 2, 1821.

The act of June 15, 1836, chapter 100, admitted Arkansas to the Union with one Representative "until the next general census."

The legislation by which Michigan was admitted to the Union was attended with much difficulty. It will be found in the acts of June 15, 1836, chapter 99, of June 23, 1836, chapter 121, and of January 26, 1837, chapter 6, and its difficulties are illustrated by the debates of the two houses. In the present purpose it is deemed sufficient to refer to section three of the act of June 15, 1836, which provides that as soon as the people of Michigan should have complied with certain fundamental conditions the President should announce the same by proclamation; and thereupon, without further action of Congress, "the Senators and *Representatives who have been elected by the said State*" should be entitled to take their seats without further delay; nothing appearing in the statutes to indicate the number of Representatives.

The act of March 3, 1845, chapter 48, for the admission to the Union of Iowa and Florida, provides that "until the next census and apportionment" each State be entitled to one Representative. Iowa was not, in fact, admitted under this act and not until near the close of the following year, act of December 28, 1846, chapter 1; but no further provision was made for her representation.

The joint resolution of December 29, 1845, chapter 1, admits Texas to the Union with two Representatives until the next apportionment.

The act of August 6, 1846, chapter 89, enables the people of Wisconsin to form a State government, with two Representatives "until another census" and apportionment.

The act of September 9, 1850, chapter 50, admits California to the Union, with two Representatives, until the next apportionment. Before that time the seventh census was taken pursuant to the act of May 23, 1850, and California declared, by virtue of her ascertained numbers, to be still entitled to two and only two Representatives; and yet Congress thought proper, by act of June 2, 1852, chapter 91, for reasons appearing in the body of the act, to accord to her one additional Representative in the 37th Congress.

The act of February 26, 1857, chapter 60, enables the people of Minnesota to form a State government, and provides for the taking of a census in the Territory with a view to ascertain the number of Representatives to which, as a State, she would be entitled. The act of May 11, 1858, chapter 31, admits her to the Union, with two Representatives "until the next apportionment."

The act of February 14, 1859, chapter 33, admits Oregon to the Union, with one Representative "until the next census and apportionment."

The act of May 4, 1858, chapter 26, providing for the admission to the Union of Kansas, under the Lecompton constitution, and that of January 29, 1861, chapter 20, admitting her under the Wyandotte constitution, both declare her entitled to one Representative "until the next general apportionment."

The act of December 31, 1862, chapter 6, erects a portion of the State of Virginia into the new State of West Virginia, with three Representatives, leaving unchanged the number to which Virginia is entitled.

The act of March 21, 1864, chapter 36, enables the people of Nevada to form a State government, with one Representative "until the next general census;" and, on the 19th of April, 1864, an act similar in all respects was passed by the people of Nebraska, under which acts both



States have been admitted to the Union, completing the present number, 37.

These various acts have been collated at some pains to show how completely the number of Representatives in the House has been contested, at the discretion of Congress, a discretion scarcely less absolute than that of each house over "the elections, returns, and qualifications of its own members."

This is illustrated by the arbitrary, nay, artificial numbers, at which the ratio was successively fixed, by allowing Representatives for the fractions of the ratio, by the admission of new States with one, two, three, or more Representatives according to their estimated populations, by reducing the representation of a State whose population had been reduced by the excision of part of her territory, by increasing the representation of States, as in the case of Alabama and California, when it was manifested that their population had been under-estimated, and by determining the aggregate number of the House and requiring our executive officer to make the apportionment among the several States.

It is illustrated even more forcibly, if possible, by the act of March 4, 1836, chapter 36, which increases the number of Representatives from 233, the number established by the general law of May 23, 1850, to 241, giving to Pennsylvania, Ohio, Kentucky, Illinois, Iowa, Minnesota, Vermont, and Rhode Island, each one additional member, to which they were not entitled under the general law.

In a word, these acts establish the general proposition that Congress has complete jurisdiction to adjust the representative numbers of the House, and has repeatedly and constantly exercised it at discretion, according to the varied equity of each particular case.

#### THE CASE OF TENNESSEE.

The case of Tennessee is this: According to the census of 1860, the inhabitants of the United States, reckoning all free persons and three-fifths of all others, numbered 29,553,273. Divide by 241, the number of members now composing the House, it gives 122,627 as the present representative ratio. Tennessee had 834,082 free inhabitants, white and colored, and 275,719 slaves; a total of 1,109,801. Three-fifths of her slaves, however, added to her free population, on the principle of the representative enumeration, made 999,514, by virtue whereof she has now eight Representatives.

In February, 1865, she, by *voluntary act*, a popular vote, manumitted and emancipated her 275,719 slaves, nearly one-fourth of her population. Two-fifths of this number, 110,288, are thereby added to those already entitled to representation. This, with a previous representative fraction, leaves 128,785, for which the State has no Representative, counting only the population as it was in 1860. This excess of popular numbers over the number of her present Representatives is not the result of growth or natural increase, in which the several parts of the country are presumed to keep pace, at least, until the contrary is demonstrated by the census, but of a great political act as conspicuous and distinctive as would be the annexation of a foreign territory containing so many people. For the purpose of this inquiry, it is as if the boundaries of Maine were, by treaty, extended to embrace Nova Scotia, with 110,288 inhabitants. Is it equitable and just that they should be denied a Representative? The undersigned think not.

Since the voluntary action of Tennessee in emancipating her slaves, Congress has taken not only an important step toward settling the status



of American citizenship, but also indicating a further proper basis of representation. On the 16th of June, 1866, what is known as Article XIV was submitted to the legislatures of the different States. On July 20, 1868, this article was formally proclaimed as a part of the Constitution of the United States by the Secretary of State. The second section of said article, to which particular attention is invited, reads as follows:

SEC. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

This section, though general in its terms, was adopted with particular reference to the recently emancipated colored population, and is a declaration to the several States in which this population is found, that if they are enfranchised, *the State shall be represented accordingly*; if not, *representation shall be diminished*. It either means this, or is a mockery and means nothing.

As soon as possible after the promulgation of the proposed amendment—on the 16th of June, 1866—Tennessee convened her legislature and ratified it. She then changed her franchise laws to conform to the spirit of this amendment by removing from all colored people within her boundaries all civil and political disabilities, and conferring upon them the right to elect and to be elected to every office, from the highest to the lowest. Having done this, and the fourteenth article having become valid as a part of the Constitution, what was before a claim for full and complete representation, resting in the discretion of Congress, became now *an absolute, constitutional right*. For it must be borne in mind always that this action of Tennessee has been her own, independent and in advance of executive proclamations, constitutional amendments, and reconstruction acts. She has met all the conditions of the Constitution in a spirit of the most cheerful loyalty, and has created in her favor an obligation which cannot be canceled by being denied.

Her legislature, viewing the matter in this obvious light, has, by appropriate action, provided for the election of an additional Representative. On the 3d day of November, 1863—the day of the late presidential election, and the day designated by law for the election of members of Congress in Tennessee—the people of that State, fully impressed that they were fairly entitled to an additional Representative, proceeded to elect, and did elect, the Hon. John B. Rodgers to the Forty-first Congress.

It was a matter of general notoriety in Tennessee, some time before it occurred, that such an election would be held. The people of the State were duly advertised of the fact by the act of the legislature and executive proclamations. The friends of the present applicant for a seat brought him forward as a candidate at a popular convention, unusually largely attended, at the capital of the State. The popular will was fully reflected at the polls in the fact that the applicant received nearly as many votes as were cast in that State on the same day for the prevailing presidential electoral ticket. The places for voting in this case were the same as those at which votes were given by persons of different political proclivities for different candidates for Congress, and candidates for electors for President and Vice-President. Returns of the result in dif-



ferent counties were made in due form to the secretary of state, as appears in official documents, duly certified to. On these returns, after having been duly canvassed, the result was declared and a certificate of election issued by the governor of Tennessee to the claimant, which has been presented to the House and properly referred.

Thus stand the important facts in the case. The entire proceeding, from its conception to its consummation, has been remarkably regular and consistent.

The precedents cited as bearing upon the case are as weighty and significant as they are singularly numerous. *It is believed they have not been, or cannot be, successfully met or explained away.* These pointed examples of the unreserved exercise of legislative authority are, in themselves, a powerful warrant for the course which has been pursued by Tennessee. The vital point in the matter, however, is that Tennessee has not only followed "the line of safe precedent," but has conformed strictly to the true intent and meaning of the fourteenth article of the Constitution.

The fact that Tennessee happens to be the *first* State to claim the practical application of the inestimable rights conferred in said article should not be regarded as anomalous or involving a precedent of doubtful or "dangerous policy."

Objections founded upon any such reasoning are altogether likely to be speculative and fallacious, and lead to great injustice and wrong.

To admit the correctness of the somewhat sweeping statement sometimes made that the admission of the claimant would be "a most dangerous precedent," would certainly be a most severe commentary upon many of the deliberate acts of the Congresses preceding the present.

In the present instance Tennessee claims no right or privilege she would not willingly concede to any other State having a similar record.

If, upon a fair investigation of the grounds upon which she bases her right to an additional Representative, it is found her cause rests upon merit and justice, and is sustained by unquestionable authority, her demand should receive a prompt and favorable response. To deny to her a manifest constitutional right upon the questionable and untenable objection that some other State may set up a similar claim, would surely afford abundant grounds for criticism, and come in direct antagonism with the policy heretofore maintained and pursued by Congress.

The part borne by the 60,000 men of Tennessee who rallied to the standard of the Union in the late great struggle was one upon which the whole country may look with gratification for all time. Of this number 20,000 were colored men whose devotion and patriotism was illustrated upon the historic and sanguinary fields of Franklin and Nashville. Surrounded as Tennessee was by a cordon of slave States, she has no reason to look, other than with pride, at the course she has pursued in securing for our common country universal emancipation.

It is notorious that a new era has been inaugurated in our country as to popular rights. By the wonderful results of the late rebellion, long-entertained theories have been overthrown and repulsive dogmas forever obliterated. Four millions of bondmen have been raised from a position of abject servitude to the high and responsible position of American citizenship. The conferring of additional representation in the case of Tennessee will not only be a proper recognition of the claims of the recently enfranchised portion of our fellow-citizens, but will evince a consistent regard for the late decree of the American people expressed in their written Constitution.



The committee therefore recommend the adoption of the following resolutions:

*Resolved*, That John B. Rodgers, upon the facts and circumstances shown in his case, will be rightfully entitled to a seat in this House, from Tennessee, as soon as Congress enacts a law in relation thereto.

*Resolved*, That the following bill is hereby recommended for adoption:

A BILL for an act to allow the State of Tennessee an additional Representative in Congress.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the State of Tennessee, by the emancipation and enfranchisement of her colored population—slaves at the taking of the eighth census and the making the apportionment thereon—having added to her population, entitled to be represented in Congress, a number which, added to a portion previously unrepresented, is greater than the ratio by which the Representatives are now apportioned, the said State shall be allowed, until the next general census and apportionment, one additional Representative in Congress, who may be chosen from the State at large, unless the legislature of the said State shall otherwise provide.

---

#### VIEW OF THE MINORITY.

The undersigned, a minority of the Committee of Elections, are unable to agree to the result arrived at by the majority of the committee, with respect to the claim of General John B. Rodgers to a seat in this House as an additional representative from Tennessee, and with the permission of the House give the following reasons for their dissent.

The claim of General Rodgers to a seat, and of Tennessee to an additional Representative, is based upon the following facts: The census of 1860 showed 275,719 slaves in that State, two-fifths of whom, or 110,287, were deducted from her representative numbers, under the Constitution of the United States. Eight Representatives were given to Tennessee by the apportionment of 1862, based upon the census of 1860, the ratio of representation being 127,000. In February, 1865, the people of Tennessee, by their own voluntary act, in the adoption of a new constitution, emancipated and enfranchised their slaves, by so doing adding, as it is claimed, to her representative population, with a fraction left unrepresented by the apportionment of 1862, more than sufficient to entitle her to an additional Representative.

On the 12th March, 1868, the general assembly of Tennessee, by joint resolution, required the governor "to issue a writ of election to the State at large for the purpose of electing one additional member to the Congress," and the claimant was accordingly elected in November, 1868, as Representative at large from the State of Tennessee for the Forty-first Congress.

No law of the United States exists under which this seat can be claimed; and the act of July 14, 1862, requiring Representatives to be elected by single districts, has been violated in the manner of the election of the claimant; but it is alleged that the facts of the case justify, if they do not require us to legalize this claim by the passage of a law for that purpose.



The provision of the Constitution of the United States which regulates representation is as follows :

Representation and direct taxes shall be apportioned among the several States which may be included within the Union according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative.

The second section of the fourteenth article of amendments to the Constitution relates to the same subject, and modifies, to some extent, so much of the above as relates to representation, and is as follows :

SEC. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

While these provisions differ as to the manner in which the representative numbers in the States shall be ascertained, they agree in providing that Representatives shall be apportioned among the States according to these numbers, and we have thus a definite and absolute rule established, according to which apportionment shall be made, and which forbids any assignment of Representatives to any State for any other reason, and which requires that if representation be given to one State, equal proportionate representation shall be given to any other State similarly situated in respect of its representative numbers or population.

The provision of the Constitution first above quoted, also provides the means for making the apportionment so required, by requiring that once in ten years an actual enumeration shall be made ; and it would follow, by fair implication, that a reapportionment should only be made after such enumeration had shown its necessity. The practice of the Government has been uniformly in accordance with this view since the adoption of the Federal Constitution.

After each decennial census, and at no other time, a new apportionment of Representatives has been made among the States, and to each State according to its Representative population as fixed by the Constitution and ascertained by the census.

The legislation of Congress admitting new States forms no exception to this rule, since under the Constitution they may be admitted at any time, and by the provision above quoted each must have at least one Representative ; but, subject to this last provision, the number of Representatives allowed to each new State has always been the number to which it was supposed to be entitled by its representative population, upon the ratio of the last preceding apportionment. The act of March 4, 1862, by which the aggregate membership of the House was increased from 233 to 241, and one additional member was given to each of the States of Ohio, Pennsylvania, Kentucky, Illinois, Iowa, Minnesota, Vermont, and Rhode Island, and also the acts of January 14, 1823, and of June 2, 1852, by which Alabama and California were each allowed a member in addition to the number previously apportioned to them also, are not exceptions, since the first was passed to give representation to large fractions of representative population which would otherwise be



unrepresented, and the last two were intended to correct errors arising from insufficient census returns in the apportionment previously made to those States.

We have no right, therefore, under the Constitution and the uniform practice of our legislative history, to give representation to the 110,287 slaves in Tennessee, as shown by the census of 1860, who were excluded from making a part of the representative population of that State under the Constitution as it stood in 1860, but who, as freemen, if now living in that State, would, under the same Constitution, be a part of such representative number, without at the same time providing for equal representation to the 1,469,925 persons in other States, who, slaves then, have since become free. The fact that the slaves of Tennessee became freemen by the voluntary act of the people of the State, while those of other States were made such without the assent and against the will of the people of those States, cannot affect the question, since it is the *fact* of their freedom, and not the *manner* in which they became free, which alone has any legal significance in the case.

It is no answer to this objection that no other State than Tennessee asks for this additional representation. It is the duty of Congress to apportion Representatives among the States according to their respective numbers, and this whether the States ask for it or not; and to give additional representation to Tennessee, while withholding it from States equally entitled to it, and upon facts equally within our knowledge, would be a violation of this duty.

The passage of such a general law at this time would not be proper, since the adoption of the fourteenth amendment has given a new rule for ascertaining representative numbers, and Representatives are *required* to be apportioned among the several States according to those numbers. No enumeration heretofore made of the people of the United States would enable us to ascertain the present representative numbers of the several States. Such an enumeration, however, must be made under the Constitution before the close of the next year. Then, and not till then, can an apportionment be made such as the Constitution now requires.

There is another consideration to which the minority deem it proper to call attention, and which seems to answer fully the equitable ground for this claim, urged on the part of the State of Tennessee.

The next census will undoubtedly show a very large increase of the population of the United States. This increase has been added, almost entirely, to the population of the States which were loyal during the war, and were not slaveholding States at its commencement. During the war the immigration to this country was excluded from the Southern States by the blockade, and by the presence of our armies, and since has been almost equally excluded by the distracted condition of those States.

The loss of life, and the check to the increase of population from other causes, is also believed to have been much greater in the States which were the immediate seat of hostile operations. We do not believe that any one will seriously question that the apportionment of 1862, based upon the census of 1860, gives to each of the lately slaveholding States a larger proportionate representation than they would be entitled to upon an enumeration made at the present time, and according to the rule by which such representation must now be made. To yield the claim of Tennessee would increase this disproportion, and would be unjust to the States which were faithful to the Union through all its trials, and who by their fidelity saved the republic.

The fact that another census is so near at hand is a sufficient reason



why this matter should be allowed to rest until we shall have the means of readjusting representation upon the basis which the Constitution as amended now requires, and with entire fairness to all the States of the Union.

The minority of the Committee of Elections therefore recommend the adoption of the following resolution :

*Resolved*, That General John B. Rodgers is not entitled to a seat, as a Representative from Tennessee in the Forty-first Congress, and that the Committee of Elections be discharged from the further consideration of the claim of Tennessee to an additional Representative.

JOHN C. CHURCHILL.

ALBERT G. BURR.

SAMUEL J. RANDALL.

H. E. PAINE.



## LIST OF CASES.

	Page.
1. M. F. Bonzauo, (no decision in House).....	1
2. A. P. Field, (no decision).....	15
3. W. D. Mann, (no decision).....	16
4. Jocks and Johnson, (no decision).....	17
5. Coffroth vs. Koontz, ( <i>prima facie</i> case).....	25
6. Baldwin vs. Trowbridge, (conflict of authority between State constitution and legislature).....	46
7. Washburn vs. Voorhees, (allegations of fraud, polls rejected).....	54
8. Dodge vs. Brooks, (allegations of fraud).....	78
9. Follett vs. Delano, (defective notice and poll-books alleged).....	113
10. Boyd vs. Kelso, (alleged irregularities).....	121
11. Fuller vs. Dawson, (allegations of fraud).....	126
12. Koontz vs. Coffroth, (on final merits, allegations of fraud and illegal voting).....	138
13. Thomas vs. Arnell, (no decision in House).....	162
14. Colorado case, ( <i>prima facie</i> case, no decision on final merits, power of a certificate).....	164
15. Delano vs. Morgan, (allegations of fraud, polls rejected, votes of deserters rejected).....	168
16. Birch vs. Van Horne, (the State may regulate the elective franchise).....	205
17. McGrorty vs. Hooper, (Utah case).....	211
18. Hogan vs. Pile, (allegations of fraud and illegal voting).....	281
19. Kentucky election, (disloyalty alleged).....	327
Kentucky election, (second report).....	368
20. Symes vs. Trimble, (allegations of disloyalty).....	370
21. Switzler vs. Anderson, (allegations of intimidation, secretary of state rejected returns).....	374
Switzler vs. Anderson, (second report).....	394
22. Smith vs. Brown, (allegations of disloyalty; where member-elect is ineligible, minority candidate is not entitled to the seat).....	395
23. Blakey vs. Golladay, (a minority of voters cannot elect a representative).....	417
24. McKee vs. Young, (allegations of disloyalty, also of illegalities; paroled rebel soldier votes rejected).....	422
McKee vs. Young, (second report).....	458
25. R. R. Butler, (allegations of disloyalty).....	461
26. Christy vs. Wimpey, (allegations of disloyalty, minority of votes cannot elect).....	464
27. Chaves vs. Clever, (allegations of fraud).....	467
28. Jones vs. Mann, (allegations of fraud and violence).....	471
29. Hunt vs. Menard, (a special election, held after the State was redistricted, held not valid).....	477
30. T. A. Hamilton, (claim for additional representation).....	499
31. T. S. Casement, (no decision).....	516
32. Foster vs. Covode, ( <i>prima facie</i> case, allegations of fraud).....	519
33. Hunt vs. Sheldon, ( <i>prima facie</i> case, allegations of violence and intimidation, precincts excluded).....	530
34. Hunt vs. Sheldon, (on final merits, allegations of intimidation and violence, the vote of precincts rejected).....	530
35. Hoge vs. Reed, ( <i>prima facie</i> case, second certificate issued).....	540
36. Wallace vs. Simpson, ( <i>prima facie</i> case, second certificate issued).....	552
37. Myers vs. Moffett, (allegations of fraud and illegalities).....	564
38. Georgia cases, (a State delegation claimed seats in two Congresses under one election).....	596
39. Covode vs. Foster, (allegations of fraud; case on final merits).....	600
40. Van Wyck vs. Greene, (allegations of fraud).....	631
41. Taylor vs. Reading, (allegations of fraud).....	661
42. Sypher vs. St. Martin, (allegations of fraud and violence).....	699
43. Hunt vs. Sheldon, (case on final merits, allegations of fraud and violence).....	703
44. Morey vs. McCranie, (allegations of intimidation and violence).....	719
45. Newsham vs. Ryan, (allegations of intimidation and violence).....	725



	Page.
46. Wallace vs. Simpson, (case on its merits, allegations of violence and intimidation) .....	731
47. Whittlesey vs. McKenzie, (allegations of disloyalty) .....	746
48. Darrell vs. Bailey, (allegations of violence and intimidation) .....	754
49. Barnes vs. Adams, (allegations of fraud and violations of law) .....	760
50. Tucker vs. Booker, (no decision in House) .....	772
51. Switzler vs. Dyer, (the secretary of state rejected the returns from two counties, held to be illegal and improper) .....	777
52. Joseph Segar, (claim for an additional representative) .....	810
53. Reid vs. Julian, (allegations of fraud) .....	822
54. Zeigler vs. Rice, (allegations of disloyalty) .....	871
55. Eggleston vs. Strader, (illegalities) .....	897
56. Boyden vs. Shober, (illegalities and fraud) .....	904
57. Sheafe vs. Tillmann, (allegations of fraud) .....	907
58. Shields vs. Van Horne, (allegations of fraud) .....	922
59. John B. Rodgers .....	941
A.	
Adjournment of election officers for dinner .....	172
Additional representative, claim for .....	810
Ditto .....	941
B.	
Bonzano, M. F., case of .....	1
Baldwin vs. Tiowbridge, case of .....	46
Boyd vs. Kelso, case of .....	121
Birch, J. H., case of .....	205
Blakey vs. Golladay, case of .....	417
Butler, R. R., case of .....	461
Barnes vs. Adams, case of .....	760
Board of canvassers can only ascertain and declare result of vote .....	417
Ballots not sufficient evidence where there are allegations of fraud .....	822
Boyden vs. Shober .....	905
C.	
Coffroth vs. Koontz, <i>prima facie</i> case of .....	25
on final merits .....	138
Colorado election case .....	164
Christy vs. Wimpey, case of .....	464
Chaves vs. Clever, case of .....	467
Cosement, T. S., case of .....	516
Covode vs. Foster, <i>prima facie</i> case of .....	519
on final merits .....	600
Certificate of governor of a Territory issued in violation of law, not held <i>prima facie</i> evidence of right to seat .....	164
Certificate of election can be followed by another under a changed condition of facts .....	541
Ditto .....	552
Certificate of election once issued by the proper officer a new officer cannot issue another .....	165
D.	
Dodge vs. Brooks, case of .....	78
Delano vs. Morgan, case of .....	168
Darrell vs. Bailey, case of .....	754
Disloyalty, a bar to membership .....	327
Ditto. do. ....	422
Ditto. do. ....	464
Ditto. expressed in a published letter a bar to membership .....	396
Desertion may disqualify for voting .....	168
District, change of congressional, election held after a State was redistricted, in a particular district was held not to be valid .....	471
E.	
Election officers. (See Officers.) .....	
Elective franchise, the State may regulate it .....	205



	Page.
<i>Election</i> , members from Georgia claimed seats in <i>two</i> Congresses by virtue of a single election under an ordinance of constitutional convention. Their claim was held not to be valid.....	596
Evidence, hearsay, inadmissible.....	822
Eggleston vs. Strader.....	897

F.

Field, A. P., case of.....	15
Follett vs. Delano, case of.....	113
Fuller vs. Dawson, case of.....	126
Foster vs. Covode, case of.....	519
<i>Frauds</i> , taint the entire poll when the result cannot be clearly ascertained.	
Individual votes, however, may be proved.....	54
Ditto.....	78
Ditto.....	168
Ditto.....	564
Ditto.....	600
Ditto.....	777

G.

Georgia cases .....	596
---------------------	-----

## H.

Hogan vs. Pile, case of.....	281
Hunt vs. Menard, case of.....	471
Hamilton, T. H., case of.....	499
Hunt vs. Sheldon, <i>prima facie</i> case of.....	530
on merits.....	703
Hoge vs. Reed, case of.....	540
House of Representatives, its powers.....	142

I.

<i>Ineligibility</i> of member-elect gives no claim to candidate receiving next highest number of votes.....	395
Ditto .....	418
Ditto .....	464
Ditto .....	471
<i>Intimidation.</i> (See <i>Violence.</i> )	

J.

<b>Jacks and Johnson, cases of.....</b>	<b>17.</b>
<b>Jones vs. Mann, case of.....</b>	<b>471.</b>

K.

<b>Koontz vs. Coffroth, case of</b> .....	<b>188</b>
<b>Kentucky election</b> .....	<b>327</b>

## L.

*Legislature of a State, its authority to regulate elections paramount to State constitution.*..... 47

M.

Mann, W. D., case of.....	16
McGrorty vs. Hooper, case of.....	211
McKee vs. Young, case of.....	423
Myers vs. Moffett, case of.....	564
Morey vs. McCranie, case of.....	719

N.

Newsham vs. Ryan, case of.....	724
Notice, defective.....	113
where it failed specifically to demand that a particular poll be excluded, it was held that it could not be rejected.....	631



## O.

	Page.
<i>Officer, de facto</i> , acting under color of office, his acts held valid .....	144
Ditto .....	760
<i>Officers</i> , acting without color of law or office, his acts not valid .....	907
<i>Officers</i> of election neglecting their duty and permitting unqualified persons to vote, the poll was excluded .....	564
Ditto .....	600
<i>Officers</i> of election disobeying the law where a preliminary oath is to be put to voters, the votes were rejected .....	631
<i>Officers</i> of election adjourning for dinner .....	172
<i>Officers</i> of election disregarding the law regarding poll-books, justifies their rejection .....	32
<i>Officers</i> of election without legal qualification, the election has no more validity than where there were no election officers .....	461
Ditto .....	822
<i>Officers</i> of election may decide a person a deserter without conviction in court of law and reject his vote .....	169
<i>Officers</i> of election without legal qualifications, and illegal voting resulted therefrom, the poll was thrown out .....	171
Ditto .....	907
<i>Officers</i> of election ineligible under the law, destroys the validity of an election ..	422
<i>Officers</i> of election violating the law, casts presumption of fraud on the election ..	469
<i>Officers</i> of election neglecting the law in technical matters without fraudulent intent, the poll shall stand .....	777
Ditto .....	897
Ditto .....	760
<i>Officers</i> of election, acts of, so far as the public is concerned, are valid .....	897
<i>Officers</i> of election. (See <i>Returns</i> .)	

## P.

<i>Prima facie cases</i> — <i>Koontz vs. Coffroth</i> .....	25
<i>Foster vs. Covode</i> .....	519
<i>Hunt vs. Sheldon</i> .....	530
<i>Hoge vs. Reed</i> .....	540
<i>Wallace vs. Simpson</i> .....	552
<i>Poll-books</i> , defective, where the tally-sheets were unimpeached, the stated returns were not set aside .....	113
where the law in regard to certifying, signing, and returning the evidence was disregarded, it was rejected .....	32
<i>Pauper voters</i> .....	145
Ditto .....	600
<i>Pauper voters</i> . (See <i>Returns</i> .)	

## R.

<i>Returns</i> , illegal. (See 31.)	
<i>Returns</i> tainted with fraud so that true result cannot be deduced therefrom, shall be rejected .....	78
Ditto .....	168
Ditto .....	54
Ditto .....	467
Ditto .....	519
Ditto .....	564
Ditto .....	822
<i>Returns</i> , where secretary of state refused to count the returns, it was held that his duties were ministerial and not judicial .....	374
Ditto .....	922
Ditto .....	777
<i>Returns</i> cannot be rejected by a governor of State .....	907
where a return is rejected each party may prove individual votes ....	62
when rejected, individual votes may be proved by parol testimony .....	822
<i>Returns</i> shall not be rejected for informalities where there are no traces of fraud ..	144
Ditto .....	905
<i>Returns</i> . (See <i>Poll-book</i> .)	
<i>Registration list</i> , use of an alphabetized copy to facilitate voting warranted ....	281
<i>Rebel soldiers</i> , on parole, could not vote in Kentucky .....	422
Ditto .....	760
<i>Representative</i> , additional claim for .....	499
Ditto .....	810



	Page.
<i>Residence</i> , to gain residence a person must actually join a community, laying aside his former residence.....	600
Ditto .....	661
Reid vs. Julian .....	822
Rodgers, J. B., claim for additional representative.....	941

S.

<i>State government</i> , reorganization of, in Louisiana.....	1
Symes vs. Trimble, case of.....	370
Switzler vs. Anderson, case of.....	374
Smith vs. Brown, case of.....	395
Sypher vs. St. Martin, case of.....	699
Switzler vs. Dyer, case of.....	777
Segar, Joseph, case of.....	810
Sheafe vs. Tillman.....	907
Shields vs. Van Horne.....	923

T.

Thomas vs. Arnell, case of.....	162
Taylor vs. Reading, case of.....	661
Tucker vs. Booker, case of.....	772

V.

<i>Violence and intimidation</i> in certain precincts does not invalidate the election in those which were peaceable.....	531
Ditto .....	699
Ditto .....	703
Ditto .....	719
<i>Violence and intimidation</i> sufficient cause for the rejection of the whole vote of a parish.....	531
Ditto .....	699
Ditto .....	703
Ditto .....	719
<i>Violence and intimidation</i> , where violence prevails in certain parishes and not in others, the result in the peaceable ones may be accepted.....	699
Ditto .....	703
Ditto .....	719
Ditto .....	724
Ditto .....	731
Ditto .....	754
Van Wyck vs. Greene, case of.....	631

W.

Washburn vs. Voorhees, case of.....	54
Wallace vs. Simpson, <i>prima facie</i> case.....	552
on merits.....	731
Whittlesey vs. McKenzie, case of.....	446

Z.

Zeigler vs. Rice .....	871
------------------------	-----



























